

State of Rajasthan and Others

Vs

M/S. Swaika Properties and Another

Civil Appeal No. 2085 of 1985

(V. B. Eradi, A. N. Sen JJ)

08.04.1985

JUDGMENT

A. P. SEN, J. -

1. The issue involved in this appeal by special leave is : Whether the service of notice under sub-section (2) of Section 52 of the Rajasthan Urban Improvement Act, 1959 ('Act' for short) served on the respondents at their registered office at 18-B, Brabourne Road, Calcutta by the Special Officer, Town Planning Department, Jaipur was an integral part of the cause of action and was sufficient to invest the Calcutta High Court with jurisdiction to entertain a petition under Article 226 of the Constitution challenging the validity of a notification dated February 8, 1984 issued by the State Government of Rajasthan under Section 52(1) of the Act for the acquisition of certain lands belonging to them required by the Urban Improvement Trust, Jaipur for a public purpose, namely, for implementation of a development scheme viz. Civil Lines Extension Scheme.

2. It is somewhat strange that a learned Single Judge of the Calcutta High Court (R. N. Pyne, J.) should have by his order dated March 13, 1984 entertained a petition under Article 226 of the Constitution filed by the respondents, issued a rule nisi thereon requiring the reasons as to why a writ in the nature of mandamus should not be issued directing the appellants herein, the State of Rajasthan, the Jaipur Development Authority, Jaipur and the Land Acquisition Officer, Jaipur to forbear from giving effect to the impugned notification dated February 8, 1984 and passed an ad interim ex parte prohibitory order restraining them from taking any steps requiring the respondents under sub-section (5) of Section 52 of the Act to surrender or deliver possession of the lands acquired forthwith or upon their failure to do so to take immediate steps under sub-section (6) thereof to secure such possession. We are distressed to find that the learned Single Judge despite a long line of decisions of this Court starting from Siliguri Municipality v. Amalendu Das ((1984) 2 SCC 436 : 1984 SCC (Tax) 133) deprecating the practice prevalent in the High Court of passing such interlocutory orders for the mere asking, should have passed the impugned orders in the manner that he did. It seems that the pronouncements of this Court have had little effect on the learned Single Judge.

3. The learned Attorney-General appearing for the State of Rajasthan takes serious exception to the authority and jurisdiction of the learned Single Judge to have entertained the writ petition filed by the respondents and issued the rule nisi and to have made the ad interim ex parte prohibitory order which virtually has brought the entire acquisition proceedings pending at Jaipur in the State of Rajasthan to a standstill. He contends that the petition filed by the respondents purporting to be under Article 226 of the Constitution in the Calcutta High Court and the rule nisi thereon and the ad interim ex parte prohibitory order secured by them on the basis of such petition from the learned

Single Judge on March 13, 1984 when there was total lack of inherent jurisdiction on the part of the Calcutta High Court to entertain such petition, constitutes a flagrant abuse of the process of the Court. There is, in our opinion, considerable force in this submission.

4. The facts of the case are as follows. Messrs Swaika Properties Pvt. Limited, Calcutta owned Khasra No. 383 area 14 bighas 16 biswas situate in village Madrampura on the outskirts of Jaipur city. On June 25, 1975 the Special Officer, Town Planning Department, Jaipur issued a notice under Section 52(2) of the Act at the instance of the Improvement Trust, Jaipur stating that it was proposed by the State Government to acquire the said land admeasuring more or less 44,770 square yards under Section 52(1) of the Act for a public purpose, namely, for the implementation of a development scheme at public expense viz. the Civil Lines Extension Scheme. The said notice was duly served on the respondents and they in compliance therewith appeared before the Special Officer, Town Planning Department, Jaipur and filed their reply dated September 8, 1975. In the reply, the respondents while denying the existence of a public purpose for acquisition of the lands under Section 52(1) of the Act asserted that they needed the said land to start new business in the State of Rajasthan and for that purpose to utilize the notified land for establishment of a branch office and for construction of residential houses for their Director and other senior executives. The Special Officer adjourned the case from time to time and issued several notices to the respondents for personal hearing under Section 52 (3) of the Act. The respondents through their representative appeared at each of these hearings and sought adjournment on one pretext or another. Significantly, although the respondents participated in the proceedings before the Special Officer, they did not raise any objection as to the power and authority of the State Government of Rajasthan to acquire the notified land under Section 52 (1) of the Act or the legality and propriety of the notice issued by the Special Officer under Section 52(2) or his jurisdiction to proceed with the inquiry under Section 52(3). Nor did the respondents place any material before the Special Officer to show that they really needed the notified land for the purpose of expansion of their business activities to the State of Rajasthan. It is pertinent to observe that the respondents had been shifting their stand before the Special Officer. As already stated, they had in their reply dated September 8, 1975 alleged that they genuinely required the land for starting new businesses in the State, to open a branch office at Jaipur and to construct residential quarters for their Director and other senior executives, but at a later stage they alleged that they wanted to construct a three star hotel on the said land. Eventually, the Special Officer by his order dated April 9, 1976 held that the alleged need of the respondents was just a pretence and he was satisfied on the material on record that the land was really not needed by them bona fide and their real object was just to get the land released from acquisition on one ground or the other. With these observations he rejected the prayer of the respondents for release of the land and recommended that the entire land be acquired by the State Government under Section 52(1) of the Act for the Urban Improvement Trust, Jaipur, and forwarded the papers to the Secretary to the State Government, Town Planning Department, Rajasthan for issue of the requisite notification under Section 52(1) of the Act.

5. It appears from the material on record that the respondents having failed in their effort to get the land released from acquisition then took up the matter with the State Government. They made an application to the State Government on February 10, 1977 seeking exemption of the notified land under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 stating that they required the land for construction of a three star hotel. The State Government in the Urban Development and Housing Department by letter dated April 4, 1977 informed the respondents that there was no possibility of an exemption being granted under Section 20 of the Act in their favour allowing them to retain vacant land in excess of 6000 square yards for the construction of a three star hotel. The State Government stated that the remaining land was required by the Urban Improvement Trust,

Jaipur for development of house sites and for construction of two Ministers' bungalows in Civil Lines and therefore the proceedings for acquisition of the notified land would not be withdrawn. The State Government required the respondents to submit detailed proposals in respect of 6000 square yards of land for their proposed three star hotel showing commitments made, Financial resources etc. through the Director of Tourism, Rajasthan, Jaipur and were intimated that they would be entitled to retain the said land on payment of the prescribed fee for converting the land use from agriculture to hotel business. Apparently, the respondents were not serious in undertaking the new venture of starting a three star hotel on an area of 6000 square yards as their real object was to get the notified land released from acquisition.

6. On February 21, 1979, there was a meeting at the Secretariat in the Urban Development and Housing Department between officers of that Department and those of the Urban Improvement Trust, Jaipur. It was clarified on behalf of the Improvement Trust that the notified land in its entirety was needed for implementation of the development scheme of the Trust. The Improvement Trust accordingly by its letter dated, March 5, 1979 requested the State Government that necessary orders be passed for acquisition of Khasra No. 383 in village Madrampura admeasuring 14 bighas 16 biswas and a notification to that effect issued under Section 52(1) of the Act. It was pointed out that a public notice Section 52(2) of the Act as regards the notified land had already been issued by the Special Officer, Town Planning Department, Jaipur dated June 25, 1975, and the necessary procedure as laid down in sub-section (3) thereof followed. As a result of this, the State Government issued that impugned notification dated February 8, 1984 under Section 52(1) of the Act and the notified land vested in the State Government free from all encumbrances. The State Government in their special leave petition have explained that the notification under Section 52(1) of the Act could not be issued till February 8, 1984 because the Government were primarily thinking of making the land available for construction of residential houses before making provisions for construction of a three star or five star hotel but nothing came out of the said proposal as there was no response from the respondents.

7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under sub-section (6) thereof.

8. The expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure :

The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court.

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The

answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondent for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.

9. It is to be deeply regretted that despite a series of decisions of this Court deprecating the practice in the High Court of passing such interlocutory orders for the mere asking, the learned Single Judge should have passed the impugned ad interim ex parte prohibitory order the effect of which, as the learned Attorney-General rightly complains, was virtually to bring to a standstill a development scheme of the Urban Improvement Trust, Jaipur viz. Civil Lines Extension Scheme, irrespective of the fact whether or not the High Court had any territorial jurisdiction to entertain a petition under Article 226 of the Constitution. Such arbitrary exercise of power by the High Court at the public expense reacts against the development and prosperity of the country and is clearly detrimental to the national interest.

10. Quite recently, Chinnappa Reddy, J. speaking for the Court in Assistant Collector of Central Exercise, W. B. v. Dunlop India Limited ((1985) 1 SCC 260 : 1985 SCC (Tax) 75) administered strong admonition deprecating the practice of the High Court of granting ad interim ex parte orders which practically have the effect of the grant of the main relief in the petition under Article 226 of the Constitution irrespective of the fact whether the High Court had any territorial jurisdiction to entertain such a petition or whether the petition under Article 226 was intended and meant to circumvent the alternative remedy provided by law or filed solely for the purpose of obtaining interim orders and thereafter delaying and protracting the proceedings by one device or the other particularly in matters relating to public revenue or implementation of various measures and schemes undertaken by the Government or the local authorities for general public benefit. Although the powers of the High Court under Article 226 of the Constitution are far and wide and the Judges must ever be vigilant to protect the citizen against arbitrary executive action, nonetheless, the Judges have a constructive role and therefore there is always the need to use such extensive powers with due circumspection. There has to be in the large public interest an element of self-ordained restraint. We hope and trust that the High Court will determine the extent of its territorial jurisdiction before making such interlocutory orders.

11. In the result, the appeal succeeds and is allowed with costs. The impugned orders passed by the learned Single Judge of the Calcutta High Court dated March 13, 1984 issuing a rule nisi on the petition filed by the respondents under Article 226 of the Constitution and the ad interim ex parte prohibitory order made by him are set aside and the proceedings before the Calcutta High Court are quashed. We quantify the costs at Rs. 5000.

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