Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad, A.P.

Vs

Mohd. Amri Khan and Others

Civil Appeal Nos. 5839-42 of 1983

(CJI P. N. Bhagwati, R. S. Pathak, A. N. Sen JJ)

30.09.1985

JUDGMENT

BHAGWATI, C.J. -

1. These appeals by special leave would have perhaps met with a different fate if the Land Acquisition Act, 1894 in its application in the State of Andhra Pradesh had not been amended by the Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983 (hereinafter referred to as the Amending Act) with retrospective effect from September 12, 1975. The retrospective amendment made by the Amending Act in Section 4 sub-section (1) of the Act completely invalidates the notifications under Section 4 sub-section (1) and Section 6 issued by the Andhra Pradesh Government and the Judgment of the High Court quashing these notifications has therefore to be sustained. The facts giving rise to these appeals are few and may be briefly stated as follows :

2. The Government of Andhra Pradesh issued a notification under Section 4 sub-section (1) stating that a total area of 35 acres and 35 gunthas was likely to be needed for the purpose of the Hyderabad Urban Development Authority (hereinafter referred to as HUDA). The notification was published in the Andhra Pradesh Gazette on August 4, 1977 and public notice of the substance of the notification was given at convenient places in the locality, after a period of about 2 months, on October 3, 1977. Thereafter an inquiry under Section 5-A of the Act was held by the Special Land Acquisition Officer and as result of the inquiry, the Andhra Pradesh Government decided to exclude an area of 6 acres 6 gunthas belonging to one Gayatri Devi Co-operative Housing Society and issued a notification under Section 6 of the Act on January 10, 1979 declaring that the remaining area of land admeasuring 29 acres 29 gunthas was needed for the purpose of HUDA. Notices under Section 9 were then issued to the respondents in these appeals who are the owners of different parcels of land comprised in the area notified under Section 6 and after holding an inquiry, the Special Land Acquisition Officer made an Award on July 27, 1981 and issued notices to the respondents calling upon them to deliver possession of the land acquired. The respondents thereupon filed writ petition in the High Court of Andhra Pradesh challenging the validity of the notifications under Section 4 sub-section (1) and Section 6 issued by the Andhra Pradesh Government.

3. There were several contentions raised on behalf of the respondents against the validity of the impugned notifications but, barring one, all were rejected by the High Court. The one contention which found favour with the High Court was that local publication of the substance of the notification under Section 4 sub-section (1) was not made on the same day on which the notification was published in the Official Gazette, but it was made almost 2 months later and the notification under Section 4 sub-section (1) was therefore invalid and the notification under Section 4 sub-section (1) being the foundation of the jurisdiction to proceed further with the acquisition, the

notification under Section 6 must also fall. The High Court, following an earlier Full Bench decision rendered by it on December 3, 1982 in Writ Petition 5722 of 1981 and other allied writ petitions, accepted this contention and quashed the notifications under Section 4 sub-section (1) and Section 6. The Land Acquisition Officer representing the State thereupon preferred the present appeals with special leave obtained from this Court.

4. The principal question which would seem to arise in these appeals is as to whether the High Court was right in taking the view that on a true interpretation of Section 4 sub-section (1) public notice of the substance of the notification under that section must be given in the locality on the same day on which the notification is published in the Official Gazette and if it is not whether that would have an invalidating consequence. There was no decision of the Supreme Court on this question at the time when the High Court gave its Judgment in the present case, but subsequent to the delivery of the Judgment by the High Court, this question came up for consideration before a Bench of this Court in special leave petitions directed against a judgment of the Delhi High Court which had taken a view different from that taken in the present case by the Andhra Pradesh High Court. This Court held in Deepak Pahwa v. Lt. Governor of Delhi ((1984) 4 SCC 308), that though publication in the Official Gazette and public notice in the locality are two vital steps required to be taken under sub-section (1) of Section 4 without which the steps contemplated under Section 4 sub-section (2) cannot be undertaken, there is nothing in sub-section (1) of Section 4 which requires that the publication in the Official Gazette and public notice in the locality must be simultaneous or immediately after one another. This Court pointed our that what sub-section (1) of Section 4 requires is that publication in the Official Gazette and public notice in the locality must be contemporaneous but contemporaneity does not involve simultaneity or immediacy. There is bound to be a gap of time between publication of the Official Gazette and public notice in the locality but what is necessary is that they should not be separated by such a long interval of time that the continuity of action may appear to be broken by a deep gap. The Court observed : (SCC p. 312, para 3)

If there is publication in the Gazette and if there is public notice in the locality, the requirements of Section 4(1) must be held to be satisfied unless the two are unlinked from each other by a gap of time so large as may lead one to the prima facie conclusion of lack of bona fides in the proceedings for acquisition. If the notification and the public notice are separated by such a large gap of time, it may become necessary to probe further to discover if there is any cause for the delay and if the delay has caused prejudice to anyone.

The judgment impugned in the present appeals was clearly overruled by this decision in Deepak Pahwa case ((1984) 4 SCC 308) and it was held that notifications under Section 4 sub-section (1) and Section 6 could not be struck down as invalid merely on the ground that public notice of the substance of the notification under Section 4 sub-section (1) was not given on the same day as the publication in the Official Gazette. We would have had to consider, in the light of the observations contained in the decision in Deepak Pahwa case ((1984) 4 SCC 308) as to whether there was such a large gap between the publication in the Official Gazette and the public notice in the locality that the continuity of action would appear to be broken and that would have necessitated examination of the question whether there was any justifiable cause for the delay and if the delay had caused prejudice to the respondents. But before the decision in Deepak Pahwa case ((1984) 4 SCC 308) came to be given by this Court, the Andhra Pradesh Legislature enacted the Amending Act which came into force with effect from June 23, 1983 and it is this Amending Act which renders it unnecessary for us to consider whether on the application of the ratio of the decision in Deepak Pahwa case ((1984) 4 SCC 308) the impugned notification under Section 4 sub-section (1) can be sustained or it is liable

to be struck down as invalid.

5. We may now proceed to refer to the relevant provisions of the Amending Act. The Amending Act was passed by the Andhra Pradesh Legislature in order to counteract the effect of the Full Bench decision of the Andhra Pradesh High Court in W.P. 5722 of 1981 and other allied writ petitions where inter alia it was held that publication in the Official Gazette and public notice in the locality must be on the same day or else the notification under Section 4 sub-section (1) would be invalid. The Amending Act was therefore given retrospective effect and sub-section (3) of Section 1 expressly enacted that the Amending Act shall be deemed to have come into force on September 12, 1975. Every provision in the Amending Act must therefore a fortiori be deemed to have come into effect from the date namely, September 12, 1975. Section 2 of the Amending Act provided that in the Land Acquisition Act, 1894 in its application to the State of Andhra Pradesh for the words "the Collector shall cause", the words "the Collector shall, within forty days from the date of publication of such notification, cause", shall be substituted. Sub-section (1) of Section 4 in its application to the State of Andhra Pradesh therefore read as follows with effect from September 12, 1975 :

> 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 the Collector shall, within forty days from the date of publication of such notification, cause public notice of the substance of such notification to be given at convenient places in the said locality.

What therefore sub-section (1) of Section 4 as it stood from and after September 12, 1975 provided was that the notification under that section shall be published in the Official Gazette and public notice of the substance of such notification shall be given in the locality "within forty days from the date of publication of such notification". This requirement would obviously apply to every notification under sub-section (1) of Section 4 issued by the appropriate Government on or after September 12, 1975. If in case of a notification issued under Section 4 sub-section (1) on or after September 12, 1975, public notice of the substance of such notification is not given in the locality within forty days from the date of publication of such notification in the Official Gazette, it would introduce a fatal infirmity invalidating such notification. Here in the present case, the notification under Section 4 sub-section (1) was published in the Official Gazette on August 4, 1977 but public notice of the substance of such notification was given in the locality as late as October 3, 1977 i.e. more than forty days after the date of publication of such notification in the Official Gazette. There was therefore clearly a violation of the mandate enacted in sub-section (1) of Section 4 as it stood from and after September 12, 1975 and the notification under Section 4 sub-section (1) was liable to be struck down as invalid, though on a ground different from that which found favour with the High Court.

6. The learned counsel appearing on behalf of the appellant however made a valiant but futile attempt to escape from the consequence of retrospective amendment of sub-section (1) of Section 4 by contending that Section 2 of the Amending Act which introduced the amendment in sub-section (1) of Section 4 should not be read as having retrospective effect, but should be construed as prospective in operation. The argument urged on behalf of the appellant was that the Legislature enacted the Amending Act for the purpose of validating acquisitions made after September 12, 1975 which were liable to be declared invalid on account of the Full Bench judgment of the Andhra Pradesh High Court in W.P. 5722 of 1981 and other allied writ petitions and it could never have been the intention of the Legislature to invalidate acquisitions which were valid when made. The Legislature, contended the learned counsel, proceeded on the assumption that the Full Bench

judgment of the Andhra Pradesh High Court represented the correct law on the subject and it was on that assumption that the Amending Act was enacted by the Legislature. If, on the Full Bench judgment of the Andhra Pradesh High Court being reversed by this Court in Deepak Pahwa case ((1984) 4 SCC 308) the assumption made by the Legislature turned out to be incorrect it was found that the Legislature proceeded on an erroneous view of the law in enacting the Amending Act, the Amending Act, argued the learned counsel, must be considered superfluous; and not the Amending Act, but the correct law as it prevailed prior to the Amending Act must be applied. This argument urged on behalf of the appellant is wholly specious and must be rejected. It is an argument of despair and it has only to be stated in order to be rejected. It is impossible to accept the proposition that because the Amending Act proceeded on an erroneous view of the law, it must be considered superfluous and must be deprived of all effect. Whatever be the reason for which the Legislature enacted the Amending Act and here the reason no doubt was to set at naught the effect of the Full Bench judgment of the Andhra Pradesh High Court - the Amending Act is on the statute book and is in force with effect from September 12, 1975 and it must be given effect according to the plain natural meaning of its words. Sub-section (3) of Section 1 of the Amending Act provides in the clearest terms, not susceptible of any ambiguity or doubt that it shall be deemed to have come into force with effect from September 12, 1975. It does not carve out any exception in relation to Section 2 of the Amending Act and that section must also therefore, according to the clear and express mandate contained in sub-section (3) of Section 1, be deemed to have come into effect on September 12, 1975. It is true that if, in case of a notification under Section 4 sub-section (1) issued after September 12, 1975, there is a gap of more than forty days between the date of its publication in the Official Gazette and the date when public notice of its substance was given in the locality. Sub-section (1) of Section 4 as amended with retrospective effect from September 12, 1975 would render such notification invalid. But that can be no ground for denying to the amendment in sub-section (1) of Section 4 retrospective effect, which sub-section (3) of Section 1 of the Amending Act expressly directs that it shall have. There is in fact to our mind no inconsistency between the mandate of sub-section (1) of Section 4 and the law as declared by this Court in Deepak Pahwa case ((1984) 4 SCC 308). This Court said in Deepak Pahwa case ((1984) 4 SCC 308) that there should not be such a large gap between publication in the Gazette and public notice in the locality as would be indicative of break in the continuity of action. What the amended sub-section (1) of Section 4 does is to legislaturely lay down the limit of the time gap beyond which it must be presumed that there is a break in the continuity of action. We must therefore reject the argument of the learned counsel appearing on behalf of the appellant that sub-section (3) of Section 1 of the Amending Act must be read down so as to exclude from its operation Section 2 of that Act.

7. We accordingly dismiss the appeals though on a ground different from that which appealed to the High Court. Each party will bear and pay its own costs throughout.

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