SUPREME COURT OF INDIA

Municipal Corporation of Greater Bombay

Vs.

Dr. Hakimwadi Tenants Association

C.A.No.4139 of 1986

(A. P. Sen and B. C. Ray, JJ.)

24.11.1987

JUDGEMENT

SEN, J.:-

1. By S. 127, Maharashtra Regional and Town Planning Act, 1966 enacts :

"127. If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final regional plan, or final development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development or otherwise,

permissible in the case of adjacent land under the relevant plan."

2. The short point involved in this appeal by special leave from a judgment of a Division Bench of the Bombay High Court dt. June 18 1986, is whether the period of six months specified in S. 127 of the Act is to be reckoned from the date of service of the purchase notice dt. July 1, 1977 by the owner on the Planning Authority i.e. the Municipal Corporation. of Greater Bombay here, or the date on which the requisite information of particulars furnished by the owner.

3. The late Dr. Eruchshaw Jamshedji Hakim was the former owner of a double-storeyed building situate on land admeasuring 3645.26 square metres bearing the cadastral survey No. 176 of Tardeo, Bombay known as Dr. Hakimwadi. The property is located at the junction of Falkland Road and Eruchshaw Hakim Road. It consists of several structures housing 24 small-scale industries, 13 shops on the ground floor and 26 residential tenements on the first floor, facing the Falkland Road. On the rear side of this building, there are several structures housing about 24 small-scale industries. The said Dr. Eruchshaw Jamshedji Hakim created a trust in respect of the properties and respondents 6-9 i.e. respondents 4-7 in the High Court, herein described as such are the present trustees appointed under the deed. The Planning Authority published a draft Development Plan in respect of 'D' ward where the property in dispute is situate. In the Development Plan the property of Dr. Eruchshaw Jamshedji Hakim was reserved for a recreation ground. The Development Plan was finalised and sanctioned by the State Government on Jan. 6, 1977. The final development scheme came into effect from Feb. 7, 1967 and thereunder the land was again reserved for recreation ground. No action having been taken for acquisition of the land until Jan. 1, 1977, the owners thereof i.e. the trustees served a purchase notice dt. July 1, 1977 on the Commissioner for Municipal Corporation of Greater Bombay either to acquire the same or release it from acquisition, and the same was received on July 4, 1977. On July 28, 1977 the Corporation's Executive Engineer wrote to respondents 4-7 and asked for information regarding the ownership of the land and the particulars of the tenants thereof. The letter stated that the relevant date under S. 127 of the Act would be the date upon which this information was received. The trustees for the time being the landlords of the property known as Hakimwadi by their lawyer's letter dt. Aug. 3, 1977 conveyed that the date of six months stipulated by S. 127 of the Act has to be computed from the date of the receipt from them of the information required. Further, they stated that as the Planning Authority for Greater Bombay was the Municipal Corporation of Greater Bombay, it had access to all the relevant records including the records pertaining to cadastral survey No. 176. It was also pointed out that the Corporation had been assessing them to property tax in respect of the said property and issuing bills and receipts, therefor and could not now question their title to ownership of the property.

4. It was further said that as regards the number of tenants, the inspection registers maintained by the Corporation's Assessment Department, upon which the assessment of the rateable value of the various tenements was based, bear ample testimony. It was next stated that the property was partly residential, partly commercial and partly meant for storage. The trustees went on to say that they were not aware of any rule framed under the Act whereby the Planning Authority could make an inquiry at that stage without taking a decision on the material question and thereby attempt to extend the time limit of six months stipulated in S. 127. The said letter was received by the Executive

Engineer on Aug. 16,1977 and presumably the information required was furnished on Aug. 16, 1977. The Executive Engineer wrote to respondents 4-7 stating that the period of six months allowed by S. 127 of the Act would accordingly commence on Aug. 4, 1977, the date when the requisite information was furnished. Next, the Executive Engineer by his letter dt. Nov. 2, 1977 intimated respondents 4-7 that the Municipal Corporation had accorded sanction to initiate acquisition proceedings in respect of the property in question under the Land Acquisition Act. Thereafter, the Corporation passed a resolution dt. Jan. 10, 1978 for the acquisition of the land and made an application to the State Government dt. Jan. 31, 1978 for taking necessary steps. The State Government being satisfied that the land was required for a public purpose issued the requisite notification dt. April 7, 1978 under S. 6, Land Acquisition Act, 1894 for acquisition of the land. On July 17, 1978 respondent 1 Dr. Hakimwadi Tenants Association filed a petition in the High Court under Art. 226 of the Consitution for quashing the impugned notification.

5. A learned single Judge (Pendse, J.) by his judgment dt. Sept. 21, 1983 allowed the writ petition on the ground that the Planning Authority having taken no steps for acquisition of land under S. 126(1) of the Act read with S. 6, Land Acquisition Act, within 10 years from the date on which the final Development Plan came into force, the acquisition proceedings commenced by the State Government under sub-sec. (2) of S. 126 at the instance of the Planning Authority were not valid inasmuch as the issuance of the impugned notification under S. 6, Land Acquisition Act for the reservation of the property under the final Development Plan for a recreation ground was not within the period of six months as required under S. 127. According to the learned single Judge, the period of six months prescribed under S. 127 of the Act begins to run on the date of service of the purchase notice on the Corporation and therefore the Corporation had to take steps to acquire the property before the Jan. 4, 1978. The Corporation not having taken any steps till the expiry of the period of six months, the resolution dt. Jan. 10, 1978 passed to acquire the property and the consequent notification dt. April 7, 1978 were invalid and of no legal consequence. In other words, he held that the commencement of the statutory period of six months was not dependent upon the directions issued by the officers of the Planning Authority, nor could the officers extend the period fixed under S. 127. As regards the practice prevalent in the Corporation to compute the period of six months from the date of receipt of the information sought, he held that it was wholly unwarranted and entirely illegal. He accordingly struck down the impugned notification under S. 6, Land Acquisition Act, and declared that the reservation of the land under the Development Plan had lapsed and it was open to the tenants of the property to claim that due to the lapse of reservation, the Planning Authority and the State Government had no jurisdiction to acquire the land in exercise of the powers under S. 126 of the Act.

6. Aggrieved, the appellant carried an appeal to a Division Bench under S. 15, Letters Patent. Bharucha, J. speaking for himself and Desai, J. upheld the view of the learned single Judge and held that the most crucial step was the application to be made by the Corporation to the State Government under S. 126(1) of the Act for acquisition of the land, it ought to have been taken within the period of six months commencing from July 4, 1977, the date of service of the purchase notice. That decision proceeds upon the view that the details of ownership or particulars of tenants are not required to be furnished in the purchase notice served by the owner or any person interested in the land. All that is required is that the owner or the person interested in the land must inform the authority that the land reserved for any plan under the Act had not been acquired by agreement

within 10 years from the date on which the plan came into force and that proceedings for acquisition of such land under the Land Acquisition Act had not been commenced within that period. It was accordingly held that the purchase notice dt. July 1, 1977 served by respondents 4-7, the trustees, was a valid notice under S. 127 of the Act and therefore the period of six months specified in S. 127 commenced running from July 4, 1977, the date of service, and came to an end on Jan. 3, 1978. That being so, it was held that upon the expiry of the period of six months on Jan. 3, 1978, the reservation of the land for recreation ground lapsed and it was released from such reservation.

7. According to the plain reading of S. 127 of the Act, it is manifest that the question whether the reservation has lapsed due to the failure of the Planning Authority to take any steps within a period of six months of the date of service of the notice of purchase as stipulated by S. 127, is a mixed question of fact and law. It would therefore be difficult, if not well-nigh impossible, to lay down a rule of universal application. It cannot be posited that the period of six months would necessarily begin to run from the date of service of a purchase notice under S. 127 of the Act. The condition prerequisite for the running of time under S. 127 is the service of a valid purchase notice. It is needless to stress that the Corporation must prima facie be satisfied that the notice served was by the owner of the affected land or any person interested in the land. But, at the same time, S. 127 of the Act does not contemplate an investigation into title by the officers of the Planning Authority, nor can the officers prevent the running of time if there is a valid notice. Viewed in that perspective, the High Court righly held that the Executive Engineer of the Municipal Corporation was not justified in addressing the letter dt. July 28, 1977 by which he required respondents 4-7, the trustees, to furnish information regarding their title and ownership, and also to furnish particulars of the tenants, the nature and user of the tenements and the total areas occupied by them at present. The Corporation had the requisite information in their records. The High Court was therefore right in reaching the. conclusion that it did. In the present case, the Planning Authority was the Municipal Corporation of Greater Bombay. It cannot be doubted that the Municipal Corporation has access to all land records including the records pertaining to cadastral survey No. 176 of Tardeo. We are inclined to the view that the aforesaid letter dt. July 28, 1977 addressed by the Executive Engineer was just an attempt to prevent the running of time and was of little or no consequence. As was rightly pointed out by respondents 4-7 in their reply dt. Aug. 3, 1977, there was no question of the period of six months being reckoned from the date of the receipt from them of the information requisitioned. The Municipal Corporation had been assessing the trust properties to property tax and issuing periodic bills and receipts therefor and obviously could not question the title or ownership of the trust. We are informed that the building being situate on Falkland Road, the occupants are mostly dancing girls and this is in the knowlege of the Corporation authorities. The rateable value of each tenement would also be known by an inspection of the assessment registers. We must accordingly uphold the finding arrived at by the High Court that the appellant having failed to take any steps, namely, of making an application to the State Government for acquiring the land under the Land Acquisition Act within a period of six months from the date of service of the purchase notice, the impugned notification issued by the State Government under S. 6 Land Acquisition Act, making the requisite declaration that such land was required for a public purpose i.e. for a recreation ground was invalid, null and void.

8. While the contention of learned counsel appearing for the appellant that the words 'six months from the date of service of such notice' in S. 127 of the Act were not susceptible of a literal

construction must be accpeted, it must be borne in mind that the period of six months provided by S. 127 upon the expiry of which the reservation of the land under a Development Plan lapses is a valuable safeguard to the citizen against arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain. By enacting S. 127 the legislature has struck a balance between the competing claims of the interests of the general public as regards the rights of an individual. An analysis of S. 126 would reveal that after publication of a draft regional plan, a development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified therein, the Planning Authority, Development Authority or as the case may be, any Appropriate Authority may, except as provided in S. 113A, at any time acquire the land either by agreement or make an application to the State Government for acquisition of such land under the Land Acquisition Act, 1894. Sub-section (2) thereof provides that the State Government may on receipt of the application contemplated by S. 126(1) or if Government (except in cases falling under S. 49 and except as provided in S. 113A) is itself of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the final gazette, in the manner provided in S. 6, Land Acquisition Act in respect of the said land. The rule is subject to an exception. Proviso to S. 126(2) interdicts that no such declaration shall be made after the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan. Sub-section (3) deals with the procedure to be followed for acquisition of the land covered by a declaration under S. 6, Land Acquisition Act. Sub-section (4) is of some relevance and reads as follows :

"(4). If a declaration is not made within the period referred to in sub-sec. (2) or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1970, the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894, in the manner provided by sub-ss. (2) and (3) of this section, subject to the modification that the market value of the land shall be market value at the date of declaration in the Official Gazette made for acquiring the land afresh."

9. The conjoint effect of sub-ss. (1), (2) and (4) of S. 126 is that if no declaration is made within the period referred to in subs. (2), that is to say, before the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, the compensation payable to the owner of the land for such acquisition, in that event, shall be the market value on the date of the fresh declaration under S. 6, Land Acquisition Act, i.e., the market value not at the date of the notification under S. 4(1) Land Acquisition Act, but the market value at the date of declaration under S. 6. That is one of the safeguards provided under the Act.

10. Another safeguard provided is the one under S. 127 of the Act. It cannot be laid down as an abstract proposition that the period of six months would always begin to run from the date of service of notice. The Corporation is entitled to be satisfied that the purchase notice under S. 127 of the Act has been served by the owner or any person interested in the land. If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under S. 127, there is no question of the land becoming available to the owner for the purpose of

development or otherwise. In the present case, these considerations do not arise. We must hold in agreement with the High Court that the purchase notice dt. July 1, 1977 served by respondents 4-7 was a valid notice and therefore the failure of the appellant to take any steps for the acquisition of the land within the period of six months therefrom, the reservation of the land in the Development Plan for a recreation ground lapsed and consequently the impugned notification dt. April 7, 1978 under S. 6, Land Acquisition Act, issued by the State Government must be struck down as a nullity.

11. Section 127 of the Act is a part of the law for acquisition of lands required for public purposes, namely, for implementation of schemes of town planning. The statutory bar created by S. 127 providing that reservation of land under a development scheme shall lapse if no steps are taken for acquisition of land within a period of six months from the date of service of the purchase notice is an integral part of the machinery created by which acquisition of land takes place. The word 'aforesaid' in the collocation of the words 'no steps as aforesaid are commenced for its acquisition' obviously refer to the steps contemplated by S. 126(1). The effect of a declaration by the State Government under sub-s. (2) thereof, if it is satisfied that the land is required for the implementation of a regional plan, development plan or any other town planning scheme, followed by the requisite declaration to that effect in the official gazette, in the manner provided by S. 6, Land Acquisition Act, is to freeze the prices of the lands affected. The Act lays down the principles of fixation by providing firstly, by the proviso to S. 126(2) that no such declaration under sub-s. (2) shall be made after the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, secondly, by enacting sub-s. (4) of S. 126 that if a declaration is not made within the period referred to in sub-s. (2), the State Government may make a fresh declaration but, in that event, the market value of the land shall be the market value at the date of the declaration under S. 6 and not the market value at the date of the notification under S. 4, and thirdly, by S. 127 that if any land reserved, allotted or designated for any purpose in any development plan is not acquired by agreement within 10 years from the date on which a final regional plan or development plan comes into force or if proceedings for the acquisition of such land under the Land Acquisition Act are not commenced within such period, such land shall be deemed to be released from such reservation, allotment or designation and become available to the owner for the purpose of development on the failure of the Appropriate Authority to initiate any steps for its acquisition within a period of six months from the date of service of a notice by the owner or any person interested in the land. It cannot be doubted that a period of 10 years is long enough. The Development or the Planning Authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they can be exercised must be strictly followed.

12. There still remain the other two points raised, namely, (i) there was waiver or abandonment of right by respondents 4-7, the trustees, to question the validity of the acquisition proceedings; and (ii) there was inordinate delay or laches on the part of respondent 1 which disentitled it to grant of relief under Art. 226 of the Constitution. We find it difficult to give effect to these contentions.

13. In order to deal with these questions, a few facts are to be stated. The Executive Engineer of the Municipal Corporation by his letter dt. Nov. 2, 1977 addressed to the lawyer acting on behalf of respondents 4-7, the trustees, to inquire whether they were prepared to sell the property in question situate at Cadastral Survey No. 176 of Tardeo. In response thereto, respondents 4-7 through their lawyer's reply dt. Nov. 18, 1977 intimated that they were prepared to consider the sale of the property in its existing condition with all the structures tenanted or otherwise at an overall rate of Rs. 650 per square metre. This response was without prejudice and they expressly stated that the offer was made without admitting the power and authority of the appellant to acquire the land or to initiate the proceedings for acquisition. Instead of accepting the same, the Executive Engineer by his letter dt. Jan. 11, 1978 wanted respondents 4-7 to disclose the basis upon which they claimed price at the rate of Rs. 650 per square metre. While keeping respondents 4-7 in suspense, the Municipal Corporation had in the meanwhile on Jan. 10, 1978 passed a Resolution that necessary steps be taken to move the State Government for acquisition of the land and thereafter actually moved the Government by their letter dt. 31, 1978 to make the requisite declaration under S. 6 Land Acquisition Act, 1894 i.e. the property in question was needed for public purpose viz. a recreation ground under the Development Plan. The State Government accordingly on April 7, 1978 or, being satisfied that the property was needed issued the requisite impugned notification under S. 6 of the Act. Thereafter, the Special Land Acquisition Officer on Jan. 18, 1979 issued a general notice under S. 9, Land Acquisition Act, and the same was published at the site and also issued individual notice to the persons interested. The hearing was fixed for Feb. 26, 1979. On Feb. 22, 1979 i.e. four days before the hearing some of the tenants approached the Special Land Acquisition Officer and applied for three months' adjournment and accordingly the hearing was adjourned to April 24, 1979. However, no claims for compensation were filed. Nobody remained present at the hearing. Accordingly, the Special Land Acquisition Officer was constrained to issue fresh notices under S. 9 on May 25, 1981. Thereafter, the Municipal Corporation on the date fixed applied to the Special Land Acquisition Officer to keep the proceedings in abeyance at the behest of some of the tenants who had applied to the Corporation for three months' time. In the circumstances, respondents 4-7 moved the High Court under Art. 226 of the Constitution for a writ in the nature of mandamus requiring the Special Land Acquisition Officer to make an award. On Jan. 20, 1981, the learned Government Advocate gave an undertaking before the High Court that the Special and Acquisition Officer would declare the award within a period of six months and make payment of compensation within eight months. In view of this, the High Court dismissed the writ petition as not pressed.

14. On these facts, it cannot he said that there was any waiver or abandonment of rights by respondents 4-7. In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case. In the present case, respondents 4-7 had without admitting that the appellant had the authority or power to initiate the proceedings for acquisition, signified their willingness to sell the property subject to certain terms. But the appellant did not accept the offer. On the contrary, the appellant took further steps for the acquisition of the land by moving the State Government under S. 126(1) of the Act to initiate acquisition proceedings by the issuance of a notification under S. 6, Land Acquisition Act. In view of this, it cannot be said that the conduct of respondents 4-7 was such as warrants an inference of relinquishment of a known existing legal right.

15. There is no question of estoppel, waiver or abandonment. There is no specific plea of waiver, acquiescence or estoppel, much less a plea of abandonment of right. That apart, the question of waiver really does not arise in the case. Admittedly, the tenants were not parties to the earlier proceedings. There is, therefore, no question of waiver of rights by respondents 4-7 nor would this disentitle the tenants from maintaining the writ petition. The objection that there was undue delay in moving the High Court cannot prevail. The reservation has lapsed, acquisition upon such reservation is bad and the delay in filing the petition, such as it is, can make no difference to this position in law.

16. In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.