Raghunath and Others

Vs

State of Maharashtra and Others

Civil Appeal No. 1274 of 1987

(Sabyasachi Mukharji, S. Ranganathan JJ)

07.04.1988

JUDGMENT

RANGANATHAN, J. –

1. We grant special leave and proceed to dispose of the appeal after hearing both counsel.

2. The point raised in the appeal is a vary short one. The lands, belonging to the petitioners were among those sought to be acquired under the Land Acquisition Act, 1984 (hereinafter referred to as 'the Act') by means of a notification under Section 4 issued on June 22, 1982. This was followed up by a declaration under Section 6 dated March 15, 1983. The petitioners challenged both the notification and the declaration in Writ Petition No. 947 of 1983 before the High Court. The notification under Section 4 was challenged on the ground of mala fides and the declaration under Section 6 on the short ground that the petitioners' objections had not been heard before the making of the declaration. When this writ petition came up for hearing, a statement was made on behalf of the government that the notification under Section 6 was being withdrawn. On this statement being made, the writ petition was withdrawn and disposed of accordingly. Thereafter the petitioners were heard under Section 5-A of the Act and a fresh declaration under Section 6 was issued on April 4, 1985.

3. The petitioners again filed a writ petition in the High Court, being Writ Petition No. 1143 of 1985, the judgment in which forms the subject matter on the present appeal. In this writ petition they again challenged the notification under Section 4 as vitiated by mala fides and non-application of mind. The High Court has found no merit in this contention and rejected the same. We see no reason to interfere with this conclusion of the High Court.

4. However, another question was also raised by the petitioners, namely, that the withdrawal of the earlier declaration dated March 15, 1983 had the automatic effect of also rendering the notification under Section 4 dated June 22, 1982 ineffective and infructuous. On the strength of the decision of this Court in State of M. P. v. Vishnu Prasad Sharma [(1966) 3 SCR 557 : AIR 1966 SC 1593], it was contended that, once a declaration under Section 6 was issued, the notification under Section 4 exhausted itself. It made no difference, it was said, that the notification issued under Section 6 had been withdrawn. Reliance was also placed on the decision of the Bombay High Court in Ajitsingh v. State of Maharashtra [AIR 1972 Bom 177 : 1972 Mah LJ 103] in support of this proposition. This contention, however, was rejected by the High Court and hence the present appeal.

5. We are of opinion that the decision of the High Curt is correct and should be upheld. The Bench has rightly pointed out that Ajitsingh case [AIR 1972 Bom 177 : 1972 Mah LJ 103] had failed to

take note of the decisions of this Court in Girdharilal Amratlal v. State of Gujarat [(1966) 3 SCR 437 : AIR 1966 SC 1408], State of Gujarat v. Haider Bux Razvi [(1976) 3 SCC 536] and State v. Bhogilal Keshavlal [(1980) 2 SCR 284 : (1980) 1 SCC 308 : AIR 1980 SC 367] and, therefore, does not represent the correct law.

6. In Vishnu Prasad Sharma case [(1966) 3 SCR 557 : AIR 1966 SC 1593], the question for consideration of this Court was whether there could be successive declarations in respect of various parcels of land covered by a notification under Section 4(1). Considering the scheme of the Act as it then stood, the Court held that the Act envisaged a single declaration under Section 6 in respect of a notification under Section 4 and that, when once a declaration under Section 6 particularising the area in the locality specified in the notification under Section 4(1) is issued, the remaining non-particularised area stands automatically released. The court also referred to the provisions of Section 48 of the Act in this context. The following observations appear in the judgment of Sarkar, J. :

> ...it seems to me that if the correct interpretation is that only one declaration can be made under Section 6, that also would exhaust the notification under Section 4; that notification would no longer remain in force to justify successive declarations under Section 6 in respect of different areas included in it. There is nothing in the Act to support the view that it is only a withdrawal under Section 48 that puts a notification under Section 4 completely out of the way. The effect of Section 48 is to withdraw the acquisition proceedings, including the notification under Section 4 with which it stated. We are concerned not with a withdrawal but with the force of a notification under Section 4 having become exhausted.

7. The High Court was correct in pointing out that the above observations were made in the context of a valid declaration under Section 6. The court held that one there is a valid declaration under Section 6, the scope of the notification under Section 4 will get exhausted. This principle cannot clearly apply to a case where the declaration under Section 6 proves to be invalid, ineffective or infructuous for some reason. It has been so held by this Court in a number of decisions. In Girdharilal Amratlal case [(1966) 3 SCR 437 : AIR 1966 SC 1408] which was decided about a week earlier to Vishnu Prasad Sharma case [(1966) 3 SCR 557 : AIR 1966 SC 1593], this Court held that, where a notification under Section 6 is invalid, the government may treat it as ineffective and issue in its place a fresh notification under Section 6 and that there is nothing in Section 48 of the Act to preclude the government from doing so. This view has been repeated in State v. Haider Bux [(1976) 3 SCC 536] and State v. Bhogilal Keshavlal [(1980) 2 SCR 284 : (1980) 1 SCC 308 : AIR 1980 SC 367]. These decisions have clearly pointed out the distinction between a case where there is an effective declaration under Section 6 (which precludes the issue of further declarations in respect of other parts of the land covered by the notification under Section 4 not covered by the declaration issued under Section 6) and a case where, for some reason, the declaration under Section 6 is invalid.

8. It is true that in the present case there was no occasion for the High Court in the earlier writ petition to pronounce the declaration dated March 15, 1983 to be invalid. But the validity of the declaration had been challenged on the ground that the petitioners had not been heard under Section 5-A, an irregularity, which ex facie rendered the declaration invalid. The State Government obviously acknowledged this and withdrew the declaration on its own instead of obtaining a judgment to that effect from the court. In principle, there is no distinction between a case where a declaration under Section 6 is declared invalid by the court and a case in which the government itself withdraws the declaration under Section 6 when some obvious illegality is pointed out. The

point in issue in this appeal is thus directly governed by the three earlier decisions of this Court and the High Court was fully justified in dismissing the writ petition on this ground.

9. Before concluding we must refer to one circumstance which was brought to our notice by learned counsel for the petitioners and which has also been noticed in the judgment of the High Court. It appears that, between the date of withdrawal of the earlier writ petition (namely, August 23, 1983) and the issue of the second declaration under Section 6 (namely, April 4, 1985), the government had issued a fresh notification under Section 4 for the acquisition of certain lands. The lands in the two notifications under Section 4 do not completely overlap but it appears that some fields are common in both. No declaration under Section 6 appears to have been issued in furtherance of the second notification under Section 4 when the High Court heard the matter. Learned counsel for the petitioner points out that, at least in respect of such of the lands comprised in the Section 4 notification dated June 22, 1982 as are also covered by the subsequent notification under Section 4, it is legitimate to infer that the State Government has superseded the earlier notification by the later one. This contention is clearly well founded. We would, therefore, like to make it clear that in respect of the lands covered by the first notification under Section 4 which are also covered by, or comprised in, the second notification under Section 4, further proceedings regarding acquisition should be taken, in accordance with law, only in pursuance of the later notification and the proceedings initiated in respect of such lands by the first notification dated June 22, 1982 should be deemed to have been suspended.

10. With the above clarification, we affirm the order of the High Court and dismiss this appeal. In the circumstances, however, we make no order as to costs.

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