

Indore Development Authority

Vs

Madan Lal and Others

Civil Appeal Nos. 17-20 of 1988

(K. Jagannatha Shetty, Kuldip Singh JJ)

01.03.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. -

1. We have four appeals before us in which Indore Development Authority is the common appellant. For the purpose of implementing the Town Development Scheme No. 72, the Development Authority acquired lands belonging to the respondents. The validity of the acquisition was called into question by way of writ petitions under Article 226 of the Constitution before the High Court of Madhya Pradesh. The legality of the Town Development Scheme No. 72 was also challenged. The High Court has accepted the writ petitions and quashed the acquisition. The Development Authority has appealed to this Court by obtaining special leave.

2. The facts are substantially undisputed and may be stated as follows. On March 16, 1973, M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 ("the Adhiniyam") was brought into force. Prior to that date, there was in force an Act called M.P. Town Improvement Trust Act, 1960 ("the Trust Act"). Under the Trust act, the Indore Improvement Trust was constituted. The Indore Improvement Trust framed a Town Expansion Scheme No. 72 under the provisions of the Trust Act. It invited objections from persons whose lands were proposed to be acquired for executing the scheme. Some persons filed objections and suggestions and they were considered. The Improvement Trust by itself had no authority to approve the scheme. It must obtain sanction of the State Government. Accordingly, the government was approached for grant of sanction to the scheme in question. Section 50 of the Trust Act provides that when the government is approached for sanction, the Trust shall cause notice of that fact to be published for two consecutive weeks in the gazette and in the local newspaper. Section 51 of the Trust Act empowers the State Government either to sanction the scheme with or without modifications or to refuse the sanction or to return the scheme for reconsideration by the Improvement Trust. Section 52(1) of the Trust Act provides that whenever the State Government sanctions an improvement scheme, it shall be notified and Section 52(2) provides that the publication of such a notification shall be conclusive evidence that the scheme has been duly framed and sanctioned.

3. But the government in the instant case could not grant sanction to Scheme No. 72 in view of the subsequent development. On January 17, 1977, the Improvement Trust forwarded the scheme to the government with objections and suggestions it has received. When the scheme was pending consideration, the Development Authority under the Adhiniyam was established. It was established on July 13, 1977 and consequently the trust Act stood repealed and the Improvement Trust was replaced. Those were the statutory consequences under Section 87(1)(c)(ii) of the Adhiniyam. The government was thus deprived of its power to accord sanction to the Scheme No. 72.

4. The Development Authority, however notified the said scheme under Section 50(4) of the Adhiniyam and it was published in the gazette dated September 30, 1977. It was stated therein that the scheme was duly approved for Indore Plan area and it would come into operation from the date of publication of the notification. It was also stated that the copies of the scheme were available for inspection at the specified places mentioned in the notification. On May 4, 1978, there was another notification issued under Section 50(7) of the Adhiniyam giving information to the general public about khasra numbers of the lands sought to be acquired for implementation of the scheme. That notification was published in the gazette dated July 14, 1978. That was followed by letters or request to the Collector for acquiring the lands of the respondents. The chairman, Development Authority wrote letters dated February 24, 1978, September 19, 1980 and September 30, 1980 to the Collector. However, the lands were not immediately acquired. The Collector took his own time. He issued the notification dated March 29, 1985 under Section 4(1) of the Land Acquisition Act. He issued declarations dated June 26, 1986, June 27, 1986 and July 11, 1986 under Section 6 of the Land Acquisition Act. There then the respondents preferred writ petition challenging the validity of the acquisition as well as Town Development Scheme No. 72. The High Court has quashed the acquisition. The High Court has also held that the Scheme No. 72 which was not approved by the government under the Trust Act could not have been adopted by the Development Authority as if it were a scheme prepared under the Adhiniyam.

5. Before we examine the reasons given by the High Court, it will be necessary to refer to one more event in this context. After the Adhiniyam was brought into force and before the Development Authority was constituted, the government has sanctioned the Master Plan called the Indore Development Plan. It was prepared under the Adhiniyam. The draft Development Plan was published on June 10, 1974 under the provisions of Section 18 of the Adhiniyam inviting objections and suggestions from persons who are likely to be affected. In all, 343 objections and 31 suggestions were received from persons, public institutions, government departments and other organisations. The Director and the Additional Director, Town and Country Planning after giving due consideration to all the objections and suggestions modified the plan and submitted to the State Government for approval. On March 1, 1975, the State Government approved the said plan under Section 19 of the Adhiniyam and the same was published in the Gazette dated March 21, 1975. Under Section 19(5) of the Adhiniyam the Development Plan would come into operation from the date of publication of the notification and would be binding on all including development authorities and local bodies functioning within the planning area of Indore.

6. We may now consider whether the Scheme No. 72 prepared by the Improvement Trust but not approved by the government could have been adopted by the Development Authority in the manner as it did. It may be significant to note that under the Adhiniyam the government need not be approached for according sanction to the scheme prepared by the Development Authority. The government indeed has no such power under the Adhiniyam. The Development Authority is the whole and sole authority to prepare and approve any Development Scheme.

7. Section 50 of the Adhiniyam provides complete procedure for preparation of Town Development Scheme. Section 50 so far as material, is as follows :

"50, Preparation of town development scheme. - (1) The Town and Country Development Authority may, at time, declare its intention to prepare a town development scheme.

(2) Not later than thirty days from the date of such declaration of intention to make a

scheme, the Town and Country Development Authority shall publish the declaration in the gazette and in such other manner as may be prescribed.

(3) Not later than two years from the date of publication of the declaration under sub-section (2) the Town and Country Development Authority shall prepare a town development scheme in draft form and publish it in such form and manner as may be prescribed together with a notice inviting objections and suggestions from any person with respect to the said draft development scheme before such date as may be specified therein, such date being not earlier than thirty days from the date of publication of such notice.

(4) The Town and Country Development Authority shall consider all the objections and suggestions as may be received within the period specified in the notice under sub-section (3) and shall, after giving a reasonable opportunity to such persons affected thereby as are desirous of being heard, or after considering the report of the committee constituted under sub-section (5) approve the draft scheme as published or make such modifications therein as it may deem fit.

(7) Immediately after the town development scheme is approved under sub-section (4) with or without modifications the Town and Country Development Authority shall publish in the gazette and in such other manner as may be prescribed a final town development scheme and specify the date on which it shall come into operation."

8. Section 50(2) provides for preparation of the draft scheme and Section 50(3) provides for its publication inviting objections and suggestions from persons who are likely to be affected thereby. Section 50(4) requires the Development Authority to consider all the objections and suggestions as may be received within the specified period. After giving a reasonable opportunity to the objectors who are desirous of being heard or after considering the report of the Committee constituted for that purpose, the Development Authority could approve the draft scheme with such modifications as it may deem fit. Section 50(7) provides for publication of the approved scheme in the gazette specifying the date on which it shall come into force. Any development scheme thus prepared and published under Section 50(7) shall be in conformity with the Master Plan covering the area in question.

9. It is not in dispute that the Development Authority did not follow the procedure prescribed under Section 50 of the Adhiniyam for preparation of Scheme No. 72. A note dated August 24, 1977 prepared by the officers of the Development Authority indicates that the Scheme No. 72 was approved under Section 50(4) of the Adhiniyam without inviting objections and without considering the same. It was, however, argued for the appellant that the Development Authority need not have invited fresh objections and suggestions for consideration since that procedure has already been followed by the Improvement Trust under the Trust Act. The provisions of Section 87(1)(c)(ii) of the Adhiniyam were also relied upon to salvage the scheme.

10. We do not think that the Development Authority was justified in following a short cut in this case. The procedure followed under the Trust Act could not be sufficient to dispense with all the requirements of Section 50 of the Adhiniyam. As earlier noticed that Section 50 of the Adhiniyam provides procedure for preparation and approval of scheme for development. After preparing a draft scheme, the Development Authority must invite objections and suggestions from the public. There

must be due consideration of the objections and suggestions received in the light of the Master Plan of Indore. Indeed, the public must also have an opportunity to examine the scheme and file objections in the light of the Master Plan if the Development Authority wants to adopt the scheme. Since the scheme in question was not an approved scheme under the Trust Act, the Development Authority could not have dispensed with the procedure prescribed under section 50 of the Adhiniyam.

11. The other limb of the argument of counsel for the appellant relates to Section 87(1)(c)(ii) of the Adhiniyam. Section 87(1)(c)(ii) reads :

"87. Repeal, savings, and construction of references - (1) As from the date of -

* *

(c) the establishment of the Town and Country Development Authority for any area the following consequences shall ensue in relation to that area, namely -

##(i) * * *##

(ii) the Improvement Trust functioning within the jurisdiction of the Town and Country Development Authority so established shall stand dissolved any Town Improvement Scheme prepared under the said Act shall insofar as it is not inconsistent with the provisions of this Act be deemed to have been prepared under this Act."

12. Two separate consequences follow upon the constitution of the Development Authority; firstly, the Improvement Trust functioning in that area shall stand dissolved; secondly, the Improvement Scheme prepared under the Trust Act shall be deemed to have been prepared under the Adhiniyam insofar as it is not inconsistent with the provisions of the Adhiniyam. The High Court has held that the term 'scheme prepared' in the context must mean a completed scheme in respect of which all the procedures under the Trust Act have been followed. We agree with this conclusion as in our opinion, it is a correct view to be taken. But the Scheme No. 72 was not a completed scheme under the Trust Act. That scheme was considered only by the Improvement Trust but not approved by the government. Under the Trust Act the scheme has no validity unless it was approved by the government. Since that scheme was just a draft scheme under the Trust Act, it could not get the benefit of legal fiction provided under Section 87(1)(c) (ii). Besides even if the scheme was prepared with the approval of the government under the Trust Act it could not be deemed to be a scheme under the Adhiniyam unless it is in conformity with the Master Plan of Indore and it cannot also be said to be a scheme saved under Section 87(1)(c)(ii) of the Adhiniyam.

13. However, in the circumstances of the case and to avoid delay in the preparation of a fresh draft scheme, we reserve liberty to the development Authority to invite objections and suggestions with regard to Scheme No. 72 under Section 50(3) and consider the same under Section 50(4) of the Adhiniyam and take further steps according to law, if so advised.

14. There is yet another aspect. The High Court has quashed the acquisition of lands belonging to the respondents, but not on the ground of any illegality in the procedure followed. Mr. Parasaran learned counsel for the appellant therefore, submitted that the notifications issued under Sections 4 and 6 of the Land Acquisition Act may not be disturbed and the claimants will be given compensation at the current rate if the scheme is adopted and implemented. The submission appears

to be reasonable and it would avoid repetition of the procedure for acquisition. We record the submission of learned counsel. We also direct that the claimants shall be paid compensation for the lands acquired at the market value as on the date of publication of the scheme under Section 50(7) of the Adhiniyam if the scheme is ultimately approved as indicated above.

15. The respondents in Civil Appeal No. 19 of 1988 is a co-operative house building society. Mr. Sanghi, learned counsel for the society has an additional point for consideration. He submitted that the land belonging to similar societies have been exempted from acquisition and the respondent-society also is entitled to such exemption. It is not necessary to examine this question at this stage. The society may file its objections and representation when the objections are invited by the Development Authority and the Development Authority will consider the society's claim in accordance with law.

16. In the result, and subject to the above observations, these appeals are disposed of. In the circumstances of the case, we make no order as to costs.

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