

State of Maharashtra

Vs

Mahadeo Deoman Rai alias Kalal and Others

Civil Appeal No. 870 of 1975

(L. M. Sharma, P. B. Sawant JJ)

19.04.1990

JUDGMENT

SHARMA, J -

1. This appeal by special leave is directed against the decision of the Bombay High Court on a writ petition filed by respondent hereinafter referred to as 'the respondent' The application of the respondent from permitting construction on the land in question described as plots No. 29 and 30 in the town of Nasik was rejected by the Nasik Municipal Council, which led to the filing of the writ case.
2. In 1955 the respondent purchased the land in question from one Patwardhan and in 1957 obtained permission to construct a building thereon. However, no construction was made and in March 1962, a notification under Section 4 of the Land Acquisition Act was issued for the purpose of establishing a Tonga Stand. The respondent made a fresh application for permission to make construction. He was told not to do so on the ground that the land was reserved for road widening under a Town planning Scheme which was being implemented. He however started construction work and when the prevented from so doing, filed a writ application in the High Court which was later withdrawn. Subsequently he filed a suit in the civil court inter alia claiming damages. Soon thereafter a resolution was passed by the Municipal Council on February 13, 1967 whereby a decision was taken to accord permission to the respondent as asked for. The suit was thereafter withdrawn.
3. The aforesaid development came to the notice of the State Government, and the Municipal Council was asked to explain the circumstances, and the high power Committee was appointed to examine the entire matter. The aforesaid resolution was there after rescinded by the Municipal Council, and the respondent filed a fresh application for the permission to construct, which was kept in abeyance by the Council on the ground that the matter was under consideration by the Committee. Another Writ petition being Special Civil Application No. 993 of 1969 was thereupon filed by the respondent in the High Court 1969. While this case was pending, the Committee submitted its report and a fresh resolution was passed on June 29, 1970, a copy whereof is Ex. 'O', inter alia, deciding to re-plan the scheme with respect of the area in question, in accordance with the recommendation of the Committee. Consequently the matter was reopened and objection from the affected persons were invited and the respondent filed his objection petition. However, these facts were not placed before the High Court in Special Civil Application No. 993 of 1969 and, without taking them in consideration, the case was disposed of by the judgment contained in Ex. 'A' dated April 18, 1972. Without going into the merits of the matter, the High Court directed that : "The petitioner's application to respondent 1 dated July 18, 1968, for the construction permission shall be disposed of by the respondent 1 in the accordance with law". The Municipal Council by its order

dated November 21, 1972 rejected the respondent's application on the basis of the resolution dated June 29, 1970 Ex.'O', stating that the plots in question were required for road widening, and the Town Planning Scheme was being modified accordingly. This order was challenged before the High Court by a writ application out of the which the present appeal arises. On behalf of the respondent it was urged before the High Court in support of the writ petition that the disputed question must be deemed to have been finally settled in his favour in view of the earlier judgment, Ex.'A' in S.C.A. No. 993 of 1969 which was binding on the parties by reason of rule or res judicata. It was contended on behalf of the State of Maharashtra and the Municipal Council that the plea of res judicata was not available mainly for the reason that no final decision was arrived at in the earlier case. It was pointed out that the 1970 Resolution, Ex 'O', was not even brought to the notice of the court by any party, and the High Court without considering the merits of the respondent's prayer merely directed the Municipal Council to reconsider his application dated July 18, 1968 and dispose it of in accordance with law. The High Court was not impressed by this reply and allowed the writ application on the basis of the principle of constructive res judicata. It has been observed that it was for the State or the Municipal Council to have relied upon the 1970 Resolution and since this was done, their answer based upon the said resolution cannot now be entertained. By the impugned judgment it has also been said that having regard to the circumstances in which the earlier judgment Ex. 'A' was delivered, the same must be interpreted as issuing a peremptory direction to accord permission for construction without further consideration of the prayer on merits.

4. Mr. V. M. Tarkunde, the learned Counsel for the respondent, while supporting the above view the High Court has contended that the resolution of February 13, 1967 was passed by way of a compromise between the parties, and acting upon the same the respondent withdrew his suit which he had earlier filed in the civil court, and, therefore, the Municipal Council cannot be permitted to wriggle out of the situation. He also relied upon an affidavit which has been filed recently and suggested that if the present circumstances are taken into consideration the conclusion would be that the disputed land is not required either for widening the road or for any other public purpose, and the authorities have been acting mala fide at the behest of the respondents 4 and 5. So far the 1970 Resolution is concerned, it is urged that the same should be completely ignored and the Municipal Council should not be allowed to bypass the judgment of the High Court in the earlier case. Mr. Patil, the learned counsel for the appellant, has reiterated the stand taken in the High Court that the judgment Ex. 'A' did not decide any issue, and cannot be interpreted as a direction commanding the Municipal Council to allow the proposed construction. He said that at the present stage it is not possible to finally decide the question as to whether the objections to the proposed scheme raised by the respondent have any substance or not. They were invited by 1970 Resolution to place their case and to present their point of view of the before the Municipal Council. It is stated on behalf of the Municipal Council that the plots in question are urgently needed for providing space for vehicles.

5 Having regard to the sequence of events in this case, we are unable to accept the contention that the Resolution dated February 13, 1967 was the result of a binding compromise between the parties. The fact that the respondent has withdrawn his suit for damages could not by itself indicate that the municipality was bound by the said Resolution. The Municipality was equally answerable to State Government which restrained the respondent from proceedings with the construction and appointed a high power Committee to go into the entire matter. The Committee gave a report stating that the land in question would be needed for the proper circulation of the traffic. Equally we find that there is no scope for application of the principles of res judicata. We agree with the appellant that by the judgment Ex. 'A' the High Court did not finally decide the controversy and it remained open for the Municipal Council to decide, by the reconsidering and the disposing of the application of the respondent in accordance with law.

6. Besides, the question as to whether a particular scheme framed in exercise of statutory provisions is in the public interest or not has to be determined according to the need of the time and a final decision for all times to come cannot be taken. A particular scheme may serve the public purpose at a given point of time but due to change of circumstances it may become essential to modify or substitute it by another scheme. The requirement of the community do not remain static; they indeed, go on varying with the evolving process of social life. Accordingly, there must be creative response from the public authority, and the public scheme must be varied to meet the changing needs of the public. At the best for the respondent, it can be assumed that in 1967 when the resolution in his favour was passed, the acquisition of the land was not so urgently essential so as to call for his dispossession. But for that reason it cannot be held that the plots became immune from being utilised for any other public purpose for ever. The State or a body like the Municipal Council entrusted with a public duty to look after the requirement of the community has to assess the situation from time to time and take necessary decision periodically. We, therefore, hold that the Resolution dated February 13, 1967 was not binding on the Municipal Council so as to disable it to take a different decision later.

7. So far the plea of mala fides is concerned, the High Court has not recorded any finding; and we do not find any material to support the respondent's allegation.

8. For the reasons mentioned above, the impugned judgment of the High Court is set aside and the writ petition of the respondent filed in the High Court is dismissed. The respondent may even now avail the opportunity given by the 1970 Resolution, and press his objections promptly and in that case the Municipal Council may dispose of the same in accordance with law. The appeal is accordingly allowed, but the parties shall bear their own costs.

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