Syed Hasan Rasul Numa and Others

Vs

Union of India and Others

C.A. No. 1906 of 1976

(K. Jagannatha Shetty, A.M. Ahmadi JJ)

15.11.1990

JUDGMENT

K. JAGANNATHA SHETTY J

1. Delhi Development Authority issued public notice dated 5th July, 1975 stating that the Central Government proposes to make modifications to the Master Plan for Delhi with respect to an area measuring about 3.66 heets (9 acres), known as Dargah Shaheed Khan falling in zone D-5 (D.1.Z. area) bounded by 45.72 meter(1 50 ft.) r/ w Panchkuin Road in the North, 45.72 meter (150 ft.) Ramkrishna Road in the East and residential area in the South-West. It was notified that the land use of this area was proposed to be changed from 'Residential' to 'Recretional (District Park and Open Spaces)and any person having any objection or suggestion with respect to the proposed modifications could seud his objections or suggestions to the Secretary Delhi Development Authority within thirty days from the date thereof.

2. The first appellant claims to be a religious and charitable denomination being a dargah of late Hazarat Syed Hassan Rasul-Numa and the second appellant is the Sajjada Nashin (Spiritual pereeptor) of the first appellant. The first respondent is the Union of India. The second respondent is the Delhi Development Authority ("DDA").

3. The appellants allege inter alia, that the need of converting the land use from'residential' to 'recreational' appears to be a ruse to deprive the appellants the benefit of their land as there are a number of such recreational parks and open spaces in the vicinity as a mere look at the land use Map of the Master Plan for Delhi and the Delhi Guide Map, 1969 would show. They have named some of the centrally located parks like Budha Jayanti Park, Ravindra Rangashala and its forests, the Talkatora Garden and yet another across the Panchkuin Road.

4. The case of the appellants is that the said notice was not given publicity in the manner prescribed under S. 44 of the Delhi Development Act, 1957 ("Act"). It was not affixed in conspicuous places within the locality where the land is located, nor was proclaimed by the beat of drum. They were therefore, not aware of the notice and they could not file their objections within the specified period. It is also contended that the provisions of S. 44 are mandatory and the notice about the proposed change of land use ought to be published by two or more means prescribed under the section. However, when they came to know of the notice by other means, they sent their objections though belated. The objection was sent on 18th October, 1975 to the Secretary of DDA. The authorities seem to have not considered that objection. With these and other allegations the appellants

challenged the validity of the public notice. They moved the High Court for relief under Art. 226 of the Constitution.

5. The claim was heard by a Division Bench of the High Court perhaps, by way of preliminary hearing. Upon considering the affidavits filed by the parties, the High Court rejected the writ petition with the following observations on the foregoing contentions:

> "It is not disputed that the petitioners did file objections to the impugned notice though late. Therefore, we are of the opinion that even if it be assumed that the provisions of S. 44 of the Act are mandatory and the same have not been complied with in as much as publication of notice is not in two or more prescribed manners, the petitioners have not been prejudiced and there is no cause for interference under our writ jurisdiction."

6. The appellants now appeal to this Court by Special Leave.

7. There are two questions for decision: (1)whether the belated objection filed by the appellants has been considered by the authorities? and (ii) what are the requirements of S. 44; whether they have been complied with in the instant case?

8. The reasoning of the High Court is not readily comprehensible. There is no discussion in the judgment on any one of the questions. We may take up the questions in turn. On the first question, the respondents while resisting the writ petition have filed their respective affidavits in the High Court. The Secretary, DDA, in his affidavit has stated that the objection of the appellants was transmitted to the Central Government for consideration. It was his case that the Central Government alone was competent to consider the objections received from the interested persons against the public notice. Mr. K. Biswas, Deputy Secretary, Ministry of Works and Housing, Government of India, in his affidavit has, inter alia, stated

> "..... That a meeting was taken on 25-10-1975 under the Chairmanship of then Secretary to consider all objections/suggestions received in response to inter alia the Public Notice dated the 5th July. 1975, published by the DDA. However, as the letter dated 18-10-1975 containing the objections of the petitioners was received in this Ministry on 21-10-1975 that is, after the issue of the . Memorandum dated 17-10-1975. convening the ections con aforesaid meeting, the said objections could not be included in the Agenda for the meeting. However, such of those objections, which were received late (including those of the petitioners) were read out in the meeting and were duly considered in the meeing. Since the objections raised by the petitioners were untenable they were ruled out. Only those objections /suggestions which were included in the agenda and which were of any significance found place in the minutes of the meeting. Thus it would be seen that although the petitioners filed objections two and half months after the expiry of the last date for filing objections, it was considered in the meeting held on the 25th October, 1975".

9. It is evident from these averments that the appellants' statement of' objective was not listed in the aenda of the meeting , convened for consideration of all the objections received. lt;is, however, claimed that the appellants objection was read and ruled out in the meeting. But there is no record to indicate that it was considered and rejected, At any rate, it is riot borne out from the proceedings of the meetings are not recorded and maintained. It Is very much there, but it is confined only to the

listed items in the agenda of the meeting. When the proceedings of the meeting are recorded, one would naturally expect that all that transpired in the meeting should find a place in the minutes of the meeting. In the absence of any such record, we find it difficult to accept the mere obligation of the respondents that the appellants objection like any other objection was considered by the authorities. The High Court therefore. seems to be in error in asstimng that there was no proludice to the appellants. We do not however, mean to say that the appellants have a right to have their belated objection coni sidered by the authorities. If there was valid publication of the notice as prescribed under the law, they ought to have filed the objection within the period specified in the notice. They could not file their objection after the prescribed period and complain that they halve been prejudiced by non-consideration of the objection. 'The prejudice could be presumed only' when the objection filed within the prescribed period is not considered by the competent authorities.

10. The second question relates to the requirements of S. 44 of the Act and its compliance in the instant case. This is the primary and all-important question for consideration. S. 44 provides:

> "44. Public notice how to be made known- Every public notice given under the Act shall be in writing over the signature of the Secretary to the Authority and shall be widely made known in the locality to be affected thereby by affixing copies thereof in conspicuous public places within the said locality or by advertisement in local newspaper by any two or more of these means, and by any other means that SeFretary may think fit.

11. It require that the notice signed by the Secretary of the Authority shall be widely made known in the locality to be affected by the proposed modification to the Master Plan. It shall be published by (1) affixing copies of the notice in conspicuous public places within the said locality; (ii) publishing the same by beat of drum; or (iii) advertisement In local newspaper. These are the three alternate methods of publication prescribed Linder the Section. The section then speaks of: "or by any two or more of these means, and by any other means that Secretary may think fit". This is the last portion of the section which is the bone of contention between the parties. It can be conveniently split up into two parts. The first part read's "by any two or more of these means" and the next one reads "and by any other means that Secretary may think fit". Counsel for the respondents contends that the last part of the section provides for another alternate method of publication of the notice and if there is publication in any one of the methods provided in the section, it would meet the statutory requirement. The argument does seem to proceed only on the word 'or' used mmediately preceding the last part of the section. But in matters of interpretation one should not concentrate too much on one word and pay too little attention to:the other words. No provision in the statute and no word in the section may be construed in isolation. Every, provision and every word must be looked at, generally and in the context in which it isused. No doubt the provisions of S. 44 are tiotl, happily worded, out of we read carefully the' 1terms of the section, the submission of' counsel for the appellants appears to bei wholly untenable. The words used in both the limbs of the last part of the section are significant. The first one refers to 'these means' and the second speaks of 'other means'. The emphasis by the draftsman is on, the words 'these means' which plainly mean any two or more of the means provided in the Section. There are three alternate methods prescribed. The authorities will have to follow any of the two methods. This is mandatory. There is no discretion in this regard. The discretion however, is to follow more than the two methods. It is also discretionary to follow any other means of publication that the Secretary may think fit. That is left to the Secretary. This appears to be the only reasonable and sensible view to be taken by the overall structure of the section.

12. Section 11 (a) of the Act provides procedure for modification to the Master Plan and the zonal development plan. Subsec. (3) thereof provides that before making any modifications to any plan, the Authority or, as the case may be, the Central Government shall publish a notice inviting objections and suggestions from persons with respect to the proposed modification before the date specified in the notice. This is to give an opportunity to persons who are likely to be affected by the modification of the Plan to file objections and suggestions. Indeed, the interested persons or the persons who are likely to be affected have a right to file their objections and representations within the time specified. They have further right to have the objections considered by the competent authorities. In order to effectuate these rights, the prescribed means of publication must be faithfully followed giving the persons clear notice as specified in the statute. The provision pro ding such notice to. persons whose rights or interests are likely to be impaired must always, be considered as mandatory. As otherwise, it would defeat the very purpose of giving public notice inviting objections and suggestions against the proposed action.

13. There is abroad basis for the view that we have taken from the decisions of this Court although on the provisions of other enactment. The S.4(1) of the Land Acquisition Act, 1894 provides for publication of the notification in the Official Gazette and in two daily newspapers circulating in that locality where the land is situated of which atleast one shall be in the regional language. The S. 4(1) further provides that the Collector shall cause public nolice of the substance of such notification to be given at convenient places in the said locality. In Khub Chand v. State of Rajasthan, (1967) 1 SCR 120: (AIR 1967 SC 1074), Subba Rao, C.J., while construing the object and scope of S. 4(1) expressed the view that provisions of the Section requiring public notice are mandatory and the legislature thought that it was absolutely necessary that the owner of the land should have a clear notice of the proposed acquisition. It was said that the fact that the owner may have notice of the particulars of the intended acquisition by any other means does not serve the purpose of S. 4 and does not absolve frorr. the obligation to follow the method of publication of the notification. It was also observed that the notification issued under S. 4(1) without complying with the mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would also be void. This view has been reiterated in a number of subsequent decisions of this Court. In Collector (District Magistrate) Allahabad v. Raja Ram Jaiswal, (1985).3 SCC 1 : (AIR 1985 SC 1622) most of the earlier decisions have been referred to and the view taken in the Khub Chand case has been reiterated.

14. In the instant case, the notice has been pubished only in the local newspapers, namely, the Daily Pratap, The Hindustan Times, The Stateman.The Indian Express and the Navbharat Times. This is only one of the three means of publication provided under S. 44 and it apparently falls short of the mandatory requirements of the Section. Since the provisions of the S. 44 have not been complied with, the notice in question has no validity and the action taken pursuant thereto has also no validity.

15. In the result,the appeal is allowed,the order of the High Court is set aside. the impugned public notice is quashed with costs here and in the Court below.

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