SUREME COURT OF INDIA

Ujjain Vikas Pradhikaran

Vs.

Raj Kumar Johri

(Rangnath Misra CJI., Kuldip Singh S. Mohan JJ.)

14.11.1991

JUDGMENT

RANGANATH MISRA, CJ.

1. Special leave granted. Ujjain Development Authority is in appeal challenging the judgment of the Madhya Predesh High Court, Indore Bench, rendered in an application under Article 226 of the Consti- tution annulling the notification issued under section 4 of the Land Acquisition Act of 1894 (hereinafter referred to as 'the Act') by holding that scheme No.23 flamed under Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 does not operate against certain specified lands of the respondents. It would appear that there was a similar notification under section 4(1) of the Act for acquisition of the self same properties along with some 600 hectares for the purpose of development of Ujjain, a historical town of Kalidas fame within Madhya Pradesh. On 17.9.80 for different reasons the notification had been quashed. In 1985 the impugned notifi- cation was issued afresh under section 4(1) of the Act. The High Court found that the requirements of the stat- ute for completing the scheme for the purpose of which the acquisition had been made had not been complied with and, therefore, no action for acquisition under the scheme could be taken. We have heard learned counsel for both the sides and must state that the reasoning given by the High Court is difficult to find fault with. There are, however certain features which lead us not to sustain the decision of the High Court. Admittedly there has been a notification under section 50(2) of the Adhiniyam. Gazette Notification in respect of Scheme No. 23 has also been produced. Though there is a finding that the pre-conditions had not been complied with strictly under the statutory provisions, the High Court has not found any mala fides. The Development Authority in question consisted of only one person. His own order was perhaps taken by him and the governmental authori- ties as the requisite resolution. The respondents did not take the ground that there was no valid authority behind the scheme. In the earlier petition also such a ground had not been raised. The High Court called for the record and dis- covered for itself that the statutory pre-condition had not been complied with for the said scheme to operate. If this question had been raised when the earlier writ petition was filed about 12 years back, the defect could have then been rectified.

It is the admitted case before us that the undisputed huge patch of land has been substantially improved upon under the scheme. Cancellation of the notification does not bring the matter to an end. Obviously fresh proceedings would be taken after complying with the defect if the judg- ment of the High Court is allowed to stand. If the acquisi- tion is not made the respondents should enjoy usual benefits of their land on account of the development of the neighbouring area and if the re-

acquisi- tion is made there would be claim for higher compensation. Looking at the matter from these different angles, we have thought it appropriate to allow the appeal, vacate the judgment of the High Court and allow the acquisition to remain subject, however, to the condition that the notification under section 4(1) of the Act issued in 1985 shall be deemed to be one dated 1.1.88 and the market value of the land for the acquisition shall be determined with reference to that date. We would like to point out that the potential value of the land has substantially enhanced on account of the improvements made pursuant to the notification which had been assailed. We have directed the deemed date of the notification under section 4(1) to be postponed by almost three years and during this period the appellant has brought about the bulk of the improvements in the neighbourhood. We direct that 25 per cent of the potential value of the land relatable to the improvements made by the appellant would only be available to the respondents, but in fixing market value all other legitimate considerations shall be taken into account. We make it clear that we have no intention to extend the benefit under section 28A of the Act to the owners of the lands already acquired under the notification of 1980 or 1985 on the basis of our direction that the respondents' lands shall be deemed to have been notified under section 4(1) of the Act on 1.1. 1988. In fact our order must be deemed to be a separate notification for acquisition and, therefore, it would not be a common notifi- cation for the purpose of section 28-A of the Act. The respondents should, therefore, be entitled to this benefit that instead of the notification under section 4(1) of the Act being of 1985, it shall be treated to be of 1.1.1988. The appellate authority is now entitled to take position in accordance with law subject to the valuation of the compen- sation in the manner indicated. There will be no order as to costs.

V.P.R. Appeals disposed of.

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