

Scheduled Caste and Weaker Section Welfare Association (Regd.) and another

Vs

State of Karnataka and others

Civil Appeal No.1401 of 1991

(A. M. Ahmadi, M. Fathima Beevi JJ)

02.04.1991

JUDGEMENT

FATHIMA BEEVI, J.:-

1. The Karnataka Slum Areas (Improvement and Clearance) Act, 1973, which received the assent of the President on 1st October, 1974, is an Act to provide for improvement and clearance of slums in the State of Karnataka. Section 3 of the Act empowers the Government to declare certain areas as slum areas. If the Government is satisfied that any area which is likely to be a source of danger to health, safety or convenience of the public of that area or of its neighbourhood by reason of the Area being low-lying, in sanitary, squalid, over-crowded or otherwise, the Government may by notification declare the area as 'slum area'. Under Section 11, when the Government is satisfied on a report from the competent authority that the most satisfactory method of dealing with the conditions in the area is the clearance of such area and demolition of the buildings in the area, it may, by notification, declare the area to be the 'slum clearance area'.

2. The notification No.HMA59MCS76 dated 17-1-1977 was issued by the Karnataka Government declaring an extent of one acre in Timber Yard slum by the side of Main Road, Cottonpet, Bangalore, as 'slum area'. After considering the objections, another notification dated 30-12-1977 was issued 'under Section 11 (1) of the Act declaring the AIR 1984 SC 802: (1984) 2 SCR 67: 1984 entire land as 'slum clearance area'. However, on January 20, 1981, the Government issued notification under Section 3 (1) cancelling the earlier notification dated 30-12-1977 and redeclaring an extent of 1412 guntas only as slum area'. The notification dated 20-1-1981 had been challenged by the appellants mainly on the grounds that it is in violation of the principle of natural justice and Article 14 of the Constitution has been violated. It was contended that slum dwellers who are affected by the Government's action have not been given an opportunity of being heard and they have been denied equality by denying basic human needs since a major part of the slum area has been excluded from the operation of the scheme.

3. The single Judge of the High Court took the view that the appellants had no locus standi to challenge the impugned notification and even on merits there was no case. The Division Bench of the High Court agreed on the question of locus stand and without going into the merits confirmed the judgment.

4. The appellants have approached this Court under Article 136 of the Constitution of India. We have granted special leave to appeal.

5. The learned counsel for the appellants relying on the decisions of this Court in S. P. Gupta v.

Union of India, (1982) 2 SCR 365 : (AIR 1982 SC 149) and *Olga Tellis v. Bombay Municipal Corpn.* (1985) Suppl 2 SCR 51 : (AIR 1986 SC 180), vehemently contended that the High Court has erred in holding that the petitioners have no locus standi. He also submitted that in view of the purpose of the legislation and the scheme contemplated thereunder once action has been taken declaring a larger area as 'slum clearance area' any change thereafter which would directly affect the slum dwellers could not be taken without giving the affected persons an opportunity of being heard and, there is, therefore, the clear violation of the principle of natural justice. It was also urged that there is no specific provision under the statute enabling the Government to rescind the notification and assuming that it exists, there was no proper exercise of the power.

6. Mr. Rohtagi, counsel appearing on behalf of the 3rd respondent, submitted that the first notification dated 17-1-1977 was challenged by the owners of the land in a writ petition as they were not heard as required and the fresh notifications have been issued on the assurance given before the Court that they would be heard. It was pointed out that there was no need to hear the owners or occupiers at the stage of issuing the notification under Section 3 (1) of the Act and Section 11 does not confer any statutory right to the occupiers. Relying on Section 21 of the General Clauses Act, it was maintained that the power to withdraw or rescind the notification was inherent and the authority who is empowered to issue the notification is entitled to rescind the same. It was also pointed out that there had been dispute over the title of the land in question that civil litigation was in progress and that the earlier declaration was made without proper basis. Action has been taken by the owners against the tenants for eviction and orders have been obtained in their favour and the petitioners have no case and are not entitled to any relief. The counsel for the State adopted these arguments.

7. The first question that falls for consideration is whether the appellants can challenge the action of the Government. This question need not detain us when the law is now settled that in such situation even a public interest litigation would lie. The first appellant-Association represents the interests of the slum dwellers and the second appellant himself is one of the residents in the area. The action of the Government on the averments made affects a class of persons and if that group of persons is represented by the Association, they have a right to be heard in the matter. Where a member of the public acting bona fide moves the Court for enforcement of a fundamental right on behalf of a person or class of persons who on account of poverty or disability or socially or economically disadvantaged position cannot approach the Court for relief, such member of the public may move the Court even by just writing a letter as held by this Court in *Bandhua Mukti Morcha v. Union of India*, (1984) 2 SCR 67: (AIR 1984 SC 802). We are, therefore, of the view that the High Court was wrong in concluding that appellants were incompetent to invoke the jurisdiction of the Court.

8. We shall now consider the argument that the State Government had no power to rescind the notification issued under Sections 3 and 11 in the absence of any specific provision in the Act. Section 21 of the General Clauses Act is in pari materia with Section 10 of the Karnataka General Clauses Act. This section reads:-

"21. POWER TO ISSUE, TO INCLUDE POWER TO ADD TO, AMEND, VARY OR RESCIND, NOTIFICATIONS, ORDERS, RULES OR BYE-LAWS. Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rule or bye-laws so issued."

9. Under Section 21 of the General Clauses Act, the power to issue a notification includes the power to rescind it. It is always open to the Government to rescind the notification. We shall refer to the decisions of this Court in *State of Kerala v. K. G. Madhavan Pillai*, (1988) 4 SCC 669 : (AIR 1989 SC 49), *State of M. P. v. V. P. Sharma*, (1966) 3 SCR 557: (AIR 1966 SC 1593) and *Lt. Governor of H. P. v. Avinash Sharma*, (1970) 2 SCC 149 : (AIR 1970 SC 1576). In these cases arising under the Land Acquisition Act, the issue before the Court was whether the Government could exercise powers only under Section 48 of the Land Acquisition Act to withdraw a notification for acquisition made under Section 4 (1) of the Act. When the Government issued successive notifications under Section 6 covering different portions of the land notified for acquisition under Section 4 (1), the validity of the last of the notification was challenged on the ground that a notification under Section 4 (1) could be followed only by one notification under Section 6. In repelling the contention, this Court incidentally observed at page 693 (of SCC) : (at p. 64 of AIR) thus:-

"That the only way in which the notification under Section 4 (1) can come to an end is by withdrawal under Section 48(1) is not correct because under Section 21 of the General Clauses Act, the power to issue a notification includes the power to rescind it and therefore it is always open to the Government to rescind a notification under Section 4 or under Section 6 and a withdrawal under Section 48 (1) is not the only way in which a notification under Section 4 or Section 6 can be brought to an end."

10. In *Lt. Governor of H. P. v. Avinash Sharma*, AIR 1970 SC 1576 (supra), the Court observed at page 151 (of SCC) : (at p. 1577 of AIR) thus:-

"Power to cancel a notification for compulsory acquisition is, it is true, not affected by Section 48 of the Act; by a notification under Section 21 of the General Clauses Act, the Government may cancel or rescind the notification issued under Sections 4 and 6 of the Land Acquisition Act. But the power under Section 21 of the General Clauses Act cannot be exercised after the land statutorily vests in the State Government."

11. In *Lachmi Narain v. Union of India*, (1976) 2 SCR 785 : (AIR 1976 SC 714), this Court observed at page 808 (of SCR) : (at p. 729 of AIR) thus:-

"Section 21, as pointed out by this Court in *Gopichand v. Delhi Admn.*, (1959) Suppl 2 SCR 87: (AIR 1959 SC 609), embodies only a rule of construction and the nature and extent of its application must be governed by the relevant statute which confers the power to issue the notification."

12. In *State of Bihar v. D. N. Ganguly*, (1959) SCR 1191 : (AIR 1958 SC 1018), it was held that it is well settled that the rule of construction embodied in S. 21 of the General Clauses Act can apply to the provisions of a statute only where the subject-matter, context or effect of such provisions are in no way inconsistent with such application. In that case, the question was where an industrial dispute has been referred to a tribunal for adjudication by the appropriate government under Section 10(1)(d) of the Industrial Disputes Act, can the said government supersede the said reference pending adjudication before the tribunal constituted for that purpose. The Court held the notification to be invalid and ultra vires pointing out that it would be necessary to examine carefully the scheme -of the Act, its object and all its relevant and material provisions before deciding the application of the rule of construction enunciated by Section 21. After examining the relevant provisions of the Act, the Court said that once an order in writing is made by the appropriate government under S.

10(1)(d), the proceedings before the tribunal are deemed to have commenced and if the appropriate government has by implication the power to cancel its order passed under Section 10(1), the proceedings before the tribunal would be rendered wholly ineffective by the exercise of such power and Section 21 cannot be invoked.

13. In *Kamla Prasad Khetan v. Union of India*, 1957 SCR 1052: (AIR 1957 SC 676), this Court considered the scope of Section 21 of the General Clauses Act. At p. 1068 (of SCR) : (at p. 683-684 of AIR) the Court observed thus:-

"The power to issue an order under any Central Act includes a power to amend the order; but this power is subject to a very important qualification and the qualification is contained in the words 'exercisable in the like manner and subject to the like sanction and conditions (if any)'..... The true scope and effect of the expression 'subject to the like conditions (if any)' occurring in Section 21 of the General Clauses Act has been explained."

14. Relying on these decisions, the learned counsel for the appellants contended that even if source of power could be traced under Section 21, the exercise of that power could only be in the same manner as provided and when a notification under Section 3 (1) had been issued declaring certain areas as 'slum area', the power to rescind the notification and limit the extent could be exercised only after hearing the affected parties, for the Government to satisfy itself that what has already been declared does not come within the scope of the proposed scheme. The object of the statute and the relief that was sought to be conferred are matters to be taken into consideration in such action. It has been brought to our notice that about 100 persons had been living in the area under conditions which require the implementation of the scheme under the Act for their redressal and once steps have been taken in that direction any variation that could affect the occupants in the areas was required to be made only after giving them an opportunity of being heard. It is thus maintained that there had been no proper exercise of the power assuming that the power is vested on the Government and there is clear violation of the principle of natural justice.

15. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power and the rule of natural justice operates in areas not covered by any law validly made. What particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which 'the enquiry is held and the body of persons' appointed for that purpose. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the *audi alteram partem* rule could be imported. Thus in applying the test to the provisions of the earlier Act, *The Mysore Slum Areas (.Improvement and Clearance) Act, 1958*, this Court held in *Govt. of Mysore v.J. V. Bhat*, (1975) 2 SCR 407: (AIR 1975 SC696) thus:-

"There can be no two opinions about the need to hear the affected persons before declaring an area to be a slum area under Section 3 or an area as a clearance area under Section 9 or before taking action under Section 10. All these difficulties will be removed if the affected persons are given an opportunity to be heard in respect of the action proposed."

16. The Preamble to the present Act itself states that the Act is to provide for the improvement and clearance of slums in the State. Under the existing law, it has not been possible effectively to check the increase and to eliminate congestion. and to provide for basic needs such as streets, water-supply, and drainage and to clear the slums which are unfit for human habitation. To obviate this difficulty, it is considered expedient to provide for the removal of unhygienic and insanitary conditions prevailing in the slums for better accommodation and improved living conditions for slum dwellers for the promotion of public health generally. These are the objectives sought to be achieved by the enactment which has been made in implementation of the Directive Principles of State Policy to improve public health. It is, therefore, obvious that when a declaration is made under Section 3 and a further declaration is made under Section 11, the inhabitants of the areas are affected and any further action in relation to the area which is declared to be 'slum clearance area' without affording such persons an opportunity of being heard would prejudicially affect their rights. The right to be heard in the matter has been acquired by the earlier action of the authority in considering the area for the purpose of the scheme. This is clear from the proviso to sub-sec. (1) of Section 11 of the Act. When any alteration is sought to be made in the original scheme, it becomes incumbent upon the authorities to give an opportunity to the persons who had been affected by the earlier order and required to adopt a certain course of action. In this view of the matter it is to be held that when a notification is made rescinding the earlier notifications without hearing the affected parties, it is clear violation of the principle of natural justice. Such action in exercise of the implied power to rescind cannot then be said to have been exercised subject to the like conditions within the scope of Section 21 of the General Clauses Act. We, therefore, hold that the impugned notification is liable to be quashed on this ground. It shall be open to the Government to proceed after affording the slum dwellers an opportunity of being heard on the basis of the earlier notifications that were in force.

17. In the result, the appeal is allowed and the order of the High Court is set aside. The impugned notification is quashed subject to the observations made. We make no order as to costs.

Appeal allowed.

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