

State of T.N. and another

Vs

A.Mohammed Yousef and others

Spl. Leave Petn. (Civil) No.3790 of 1991

(L. M. Sharma, J. S. Verma JJ)

06.08.1991

JUDGEMENT

SHARMA, J.:-

1. The respondents have successfully challenged a notification under S. 4 of the Land Acquisition Act, 1894 opposing to acquire their land before the Madras High Court. Their writ petition was allowed by a learned Single Judge and on appeal the order was confirmed by Division Bench. The State of Tamil Nadu has challenged the decision by the present Special Leave Petition.
2. The acquisition proceeding, which is the subject matter of present case, was started for obtaining land for construction of houses by the Tamil Nadu Housing Board, constituted under S. 3 of the Madras State Housing Board Act, 1961 (Madras Act No. 17 of 1961) (hereinafter referred to as the 'Housing Board Act'), and this was mentioned in the impugned notification. The High Court has held that the public purpose mentioned in the notification was too vague in absence of details relating to the scheme for which the acquisition is sought to be made, and consequently the land owners cannot effectively avail of the benefits under S. 5A of the Land Acquisition Act by filing their objection. The learned Attorney-General, appearing for the petitioner State, has contended that the notification has adequately described the nature of the public purpose by mentioning the proposed construction of residential buildings, and the respondents ought to have filed their objections under S. 5A instead of moving the High Court with a writ application. Relying on the decision in Babu Barkys Thakur v. State of Bombay, (1961) 1 SCR 128 : (AIR 1960 SC 1203), it has been argued that even assuming that the public purpose was not mentioned in the notification with sufficient particularity, the proceeding cannot be quashed at this stage and the High Court should have dismissed the writ petition by pointing out that the remedy of the land owners was under S. 5A.
3. The reply of Mr. Parasaran, the learned counsel for the respondents, is that in view of the provisions of the Housing Board Act a proceeding for land acquisition can be commenced only after a scheme under the Act is framed, which has not been done in the present case. The land acquisition proceeding, therefore, being premature has been rightly quashed.
4. As is indicated by the preamble of the Housing Board Act, the object of establishment of the Housing Board is to provide for the execution of housing and improvement schemes. The Act envisages eight types of schemes detailed in S. 40, the housing scheme, as in the present case, being one of them. The framing of the schemes is dealt with in Chapter VII (Sections 35 to 69) and Chapter VIII containing Ss. 70, 71 and 72 provides for acquisition and disposal of land. Section 70 act that land required by the Board for any of the purposes of this Act may be acquired under the

provisions of the Land Acquisition Act and accordingly the present land acquisition proceeding was commenced.

5. The procedure prescribed for preparation of a scheme indicates that before it can be finalised, full publicity has to be given inviting objections; and in case of objections, the same have to be duly considered before granting sanction. Further, if anybody is still aggrieved, he has a right of appeal to the State Government. It is only after this stage is over that the scheme becomes final and enforceable. Admittedly the proposal to build houses in the present case, has not been put in the shape of a scheme at all and as stated on behalf of the petitioner a draft scheme with relevant details will be drawn up after the possession of the land is secured.

6. The question for decision is whether the acquisition proceeding can be initiated only after the framing of the proposed scheme and not earlier. The learned Attorney-General contended that having regard to the provisions of the Act and the other relevant considerations it must be held that the procedure in regard to the preparation of the scheme has to await the conclusion of the land acquisition proceeding. It is only after the possession of the land is delivered to the Board that its engineers and other experts can go over the land, make necessary inspection and collect vital data, on the basis of which the scheme can be drawn up. It is essential to have a clear idea of the area of the land, its boundaries, and the nature of the soil for deciding about the details of the proposed scheme, and this is not possible so long the owner of the land continues in possession. Any attempt to draw up a scheme earlier has been described by the learned counsel as an exercise in futility. Alternatively it has been contended that even if it be held to be permissible to frame the scheme without waiting for the acquisition and possession of the land, it cannot be further assumed that the land acquisition proceeding has to await the finalisation of the scheme. In other words, both the proceedings may continue simultaneously, or any of the proceeding including one for land acquisition can be commenced without waiting for the other. In any event, the land acquisition proceeding should not be condemned as premature on the ground that the scheme has not been framed. We have closely examined the entire Act with the assistance of the learned counsel for the parties and in our view the contention on behalf of the respondents that the proceeding for acquiring land can be commenced only after the scheme is framed is well founded.

7. As has been stated earlier, Chapter VII containing Ss. 35 to 69 deals with the framing of the scheme. The Act has laid down separate procedures for the different types of schemes, according to necessity and suitability. Some of the schemes do not require acquisition of land, which is, however, essential for constructing residential buildings under the housing scheme. Section 39 of the Act, therefore, while enumerating the matters to be included in the scheme, specifically mentions acquisition of land in clause (a). If the acquisition is contemplated as a subject matter of the scheme itself, it follows that it must await the preparation of the scheme wherein it will be included. The Act requires the proposed scheme to be published permitting objections to be made, and if they are found to be valid, under S. 53, the scheme to be modified or abandoned. Sub-section (1) of S. 49 directs the notice of the draft housing scheme to include and specify the following information as contained in clause (b) for the purpose of publication and information to the general public:-

"b) the place or places at which particulars of the scheme, a map of the area, and details of the land which it is proposed to acquire and of the land in regard to which it is proposed to recover a betterment fee, may be seen at reasonable hours."
(emphasis added)

The underlined words above reaffirm the position that the acquisition of the land has

to be a part of the scheme, which can be executed only after its finalisation. Apart from the revisions of S. 53 mentioned above, S. 56 further clothes the Board with the power to alter or cancel the scheme even after it is finally sanctioned. The language of clause (b) of the proviso to the section which is quoted below, once more leads to the same conclusion that acquisition of the land has to await the framing of the scheme:-

"b) If any alteration involves the acquisition otherwise than by agreement of any land not previously proposed to be acquired in the original scheme, the procedure prescribed in the forgoing sections of this Chapter shall, so far as it may be applicable, be followed as if the alteration were a separate scheme;"

(emphasis added)

8. Mr. Attorney General repeatedly said that unless the Board gets actual possession of the land in question its officers cannot go over the same for collecting the information essential for drawing up of the scheme. It has, therefore, been suggested that it is wholly impractical to expect the scheme to be framed before obtaining the possession of the land. Mr. Parasaram, the learned counsel for the respondents, rightly pointed out that the provisions of S. 147 furnish a complete answer to this argument. The section empowers the Chairman (now the Managing Director) of the Board or any person either generally or specially authorised by him in this behalf to enter into or upon any land with or without assistants or workmen for the purpose of making any inspection, survey, measurement, valuation or enquiry or to take levels or to dig or bore into subsoil or to set out boundaries and intended lines of work et cetera. The last clause in the section gives wide power to do any other thing which may appear necessary for achieving the purpose of the Act subject to certain reasonable restrictions.

The learned Attorney-General also relied on Ss. 55 and 72 in support of the petitioners stand. Section 55 directs the Board to proceed to execute the scheme as soon as it becomes enforceable. It is contended that if the acquisition proceeding is not over by the time the scheme is ready, undue delay is bound to take place. The fallacy in the argument is that it assumes that the acquisition of the land is not a part of the execution of the scheme itself. As has been indicated earlier the position is otherwise. Since the acquisition is included in the scheme the process of execution of the scheme starts immediately when steps for acquisition are taken. Thus there is no question of any disregard of the command in S. 55. Section 72 empowers the Board to lease, sell, exchange or otherwise dispose of any land vested in or acquired by it. This power has been granted to the Board, according to the petitioners, so that if the scheme is abandoned under S. 53 the land already acquired can be disposed of. We do not see any warrant for linking S. 72 with S. 53. The Board has been given the power to dispose of any land whenever it is considered in the interest of the Board to do so; and the circumstances where it may be expedient to use this power may be many, as for example, when the scheme is altered or cancelled under S. 56 due to a new development.

9. On the other hand the order, in which the different steps for the preparation of the scheme and the acquisition of the land is suggested on behalf of the petitioners to be taken appears to be impractical and defeating the purpose of S. 5A of the Land Acquisition Act. If the notification under S. 4 under the Land Acquisition Act is published without waiting for the scheme, as has been done in the present case, it will not be possible for the land owners to object to the proposed acquisition on the ground that the land is not suitable for the scheme at all, and therefore does not serve any public purpose, or that another piece of land in the area concerned, is far more suitable, leading to the

possible conclusion that the proposed acquisition is mala fide. As discussed above, the provisions of the Housing Board Act also suggest the same. The Board has not been vested with the unrestricted power to frame any scheme, as suggested by its planners. It has to take into account the representation by the local authority as mentioned under S. 50 and the objection of any other person under S. 53 and decide the same on merits before according sanction. The matter is not concluded even at that stage; the aggrieved person may appeal to the State Government and it is only subject to the final result therein that the scheme becomes enforceable. In this set up it will be practical and consistent with common sense to have the scheme finalised before starting an acquisition proceeding. We, accordingly, hold that a proceeding under the Land Acquisition Act read with S. 70 of the Madras Housing Board Act, can be commenced only after framing the scheme for which the land is required. The notification issued under S. 4 in the present case must, therefore, be held to be premature, and it was rightly quashed by the High Court.

10. Before closing his argument Mr. Attorney General stated that in the past a large number of land acquisition proceedings have been concluded and lands acquired without first framing the scheme and on the basis of the present judgment there may be an attempt by the land owners of those lands to re-open the matter. We do not think that as a result of this judgment the concluded land acquisition proceedings can be allowed to be re-opened. Although we have held that the initiation of the proceeding for acquisition has to await framing of scheme, it does not mean that the concluded acquisition proceeding can be condemned as void so as to be ignored later. However, to avoid unnecessary controversy we are hereby clarifying the position that a ground based on the present judgment shall be available to the land owners only for such land acquisition proceedings, which are under challenge and are still pending decision.

11. The special leave petition is dismissed, but in the circumstances without costs.

Petition dismissed.

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