

K. S. Pariapoornan and others

Vs

State of Kerala and others

SPL. Leave Petns. (Civil) Nos. 5514-17 of 1990

(M. M. Punchhi, B. P. Jeevan Reddy JJ)

17.12.1991

JUDGMENT

1. Retroactivity of some of the provisions of Land Acquisition Act, 1894, as amended by Land Acquisition Amendment Act, 68 of 1984, has been a source of good amount of conflict of opinion in this Court as well as among the High Courts in the country. We are not happy in adding to it but we find it inescapable, convinced as we are, that the view taken by a three-Judge Bench of this Court in Union of India v. Zora Singh, C.A. No. 4568/91 decided on 22-11-1991 (reported in 1991 (4) JT (SC) 538) requires reconsideration. We shall first state the facts, in S. L. P. No. 5514 of 1990 to indicate how the question arises.

2. The notification under S. 3(1) of the Kerala Land Acquisition Act (corresponding to S. 4(1) of the Land Acquisition Act 1894) was issued on 21-3-1978. Declaration under S. 6 was made on 15-5-1979. The Land Acquisition Officer (Collector) passed the award on 30-12-1980 and possession of acquired lands taken sometime in 1981. The claimants were not satisfied with the award. They asked for a reference under S. 18 which was made. The Civil Court gave its decision on 28-2-1985, enhancing the compensation.

3. The Land Acquisition Amendment Bill, which was later enacted into Amendment Act 68 of 84, was introduced in Parliament on 30-4-1982. The Amendment Act came into force with effect from 24-9-1984. For the present purpose it is sufficient to notice only two provisions of the Amendment Act. By Section 15 of the Amendment Act, Sub-sec. (IA) was introduced in S. 23. It reads:

"Section 23(IA) - In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under S.4, sub-sec. (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier:

Explanation - In computing the period referred to in this sub-section any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded."

4. By S. 15 of the Amendment Act Sub-sec. (2) of S. 23 was also amended. In place of the words "15 per centum", the words "30 per centum" were substituted. Ss. 28 and 34, relating to interest were also amended, raising the rate of interest, vide Ss. 18 and 20 of the Amendment Act.

5. Though the Amendment Act came into force with effect from 24-9-1984, some of its provisions were given retrospective effect, namely, the newly introduced sub-sec. (1 A) of S. 23 and the amended sub-sec. (2) of S. 23 and Ss. 28 and 34. This was done by S. 30 of the Amendment Act which reads thus:

"Section 30 - Transitional provisions -(1) The provisions of sub-sec. (1 A) of S. 23 of the principal Act, as inserted by Cl. (a) of S.15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,-

(a) every proceeding for the acquisition of any land under the principal Act pending on the- 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People), in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the commencement of this Act.

(2) The provisions of sub-sec. (2) of S. 23 and S. 28 of the principal Act, as amended by Cl. (b) of S. 15 and S. 18 of this Act respectively, shall apply and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People) and before the commencement of this Act.

(3) The provisions of S. 34 of the principal Act, as amended by S. 20 of this Act, shall apply and shall be deemed to have applied, also to and in relation to,

(a) every case in which possession of any land acquired under the principal Act had been taken before the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People), and the amount of compensation for such acquisition had not been paid or deposited under S. 31 of the principal Act until such date, with effect on and from that date; and (b) every case in which such possession had been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said S. 31, with effect on and from the date of taking such possession."

6. The question that arises in this batch of SLPs is whether the claimants are entitled to the benefit of S. 23(1 A)? It is relevant to recall that the award of the Collector in this case was made on 30-12-1980, i.e., prior to 30-4-1982 and the decision of the Civil Court on reference under S. 18 is dated 28-2-1985 i.e., subsequent to the coming into force of the Act.

7. Sub-section (1) of S. 30 of the Amendment Act gives a limited retrospective effect to sub-sec. (1 A) of S. 23. The said sub-section applies also to and in relation to two situations:

(i) a case where the proceedings for acquisition of land are pending under the principal Act on 30-4-1982 but wherein no award is made by the Collector before the said date and;

(ii) a case where the proceedings for acquisition of land are commenced after 30-4-1982. In such a case, it is immaterial whether the award by the Collector is made before 24-9-1984 or subsequent thereto.

It is evident that the case before us does not fall in either of the two situations contemplated by sub-sec. (1) of S. 30 of the Amendment Act. In this case, not only the proceedings of land acquisition are initiated prior to 30-4-1982, the award of the Collector is also made prior to the said date. If so it should follow that the benefit of sub-sec. (1 A) of S. 23 is not available to the claimants here. Mr. Poti, the learned counsel for the claimants, however, relies upon the aforesaid decision of a three Judge Bench of this Court in support of his contention that even in a case like the present one, the said benefit is available. The facts of that case are practically similar to the facts of the case before us. The notification under S. 4 was issued in 1979, the declaration in 1981 and the award of the Collector inade on 31 st March, 1981. A reference was made to the Civil Court under S.18 which was decide in the year 1985 (in some cases in 1986). The question considered therein was whether in such a case benefit of S. 23(1 A) can be given to the claimants-land holders. The Bench took the view, particularly on the basis of the language employed in S. 23(I A), that the benefit thereunder is available to all cases where the Civil Court makes its award on or after the coming into force of the Amendment Act. Kania Justice speaking for the Division Bench laid particular stress upon the words "court" and "award" occurring in the said sub-section. The opinion expressed is that the expression "court" as defined in the Act means a Civil Court and that the word "award" is applicable only to the decision or determination of the Collector and Civil Court, but not to the decision/determination by the High Court, or Supreme Court on appeal. Accordingly it is held that the Civil court (on reference under S. 18) can award the amount provided by the said sub-section in every case decided by it, after the coming into force of the said sub-section, irrespective of any other circumstances. In other words, whether the proceedings for acquisition have begun before or after 30-4-1982 and whether the award of the Collector is made before or after 30-4-1982, the Civil Court (on reference under S. 18) can award the said benefit so long as its decision is rendered after the commencement of the Amendment Act (24-9-1984). The said. decision is thus based upon the language of 23(I A) itself and is unrelated to and is independent of the limited retrospectivity given to the said sub-section by Sub-section (1) of S. 30 of the Amendment Act. The correctness of this reasoning is questioned by Shri T. S. Krishnamurthy Iyer, the learned counsel for the State of Kerala. Shri Poti, learned counsel for the claimants-land holders however supported its reasoning. We have heard both the counsel at some length and are of the respectful opinion that the view expressed by the Bench does not appear to be in accordance with the language and intention of the Amendment Act.

8. Now one can hit straight in the bull's eye. S. 23(1) enjoins the Court to take into consideration six factors, as enumerated therein, in determining the amount of compensation to be awarded for the land acquired under the Act. The first factor, jurisdictional in nature, is to.determine the market value of the land at the date of the publication of the notification under S. 4(1). S. 24 enumerates eight factors which the Court is forbidden from taking into consideration. The Court obliged for the purpose is the Principal Civil Court of Original Jurisdiction, unless otherwise provided, as per sub-section (d) of S. 3 of the Act. That such is the Court has also been spelled out in *Union of India v. Raghubir Singh (dead) by Lrs.*, (1989) 2 SCC 754: (AIR 1989 SC 1933), but in a different context. The role of the Collector towards determination of compensation ends up by making an award under S. 11 and that award under S. 12 is final and conclusive evidence as between the Collector and the persons interested. Yet S. 15 enjoins on the Collector that in determining the amount of compensation he shall be guided by the provisions contained in Ss. 23 and 24, providing matters to be considered or neglected in determining consideration. Thus it would be seen that between the

Collector and the Reference Court, whose powers if invoked under S. 18, the do's and don'ts which regulate their respective roles are set out in Ss. 23 and 24 of the Act and S. 23(IA) is a part of those provisions. So what the Court is required at a later stage to do under sub-sec. (1 A) of S. 23, the Collector is required beforehand to do under S. 11 read with S. 15. Having in the first place determine the amount of compensation to be awarded for land, as required by S. 23(1), both, in their respective spheres, are required to further award an additional amount calculated at the rate of 12 per cent per annum on such market value, as found to be existing on the date of notification under S. 4, for the period following commencing from the date of publication under sub-sec. (1) of S. 4, in respect of such land, to the date of award of the Collector, or the - date of taking possession of the land, whichever is earlier (emphasis laid). It is thus evident that the governing point for determining the amount of compensation to be awarded for land acquired under the Act is the date of notification under S. 4 of the Act. That the provisions of S. 23(1) and S. 23(1 A) aforesaid are substantive provisions and as amended would apply prospectively is also the dictum in Zora Singh's case (1991 (4) JT (SC) 538) (supra). On that basis S. 23(1A) can be visualized as if a superstructure on the structuring of S. 23(1), which in turn rests on the twin pillars of Ss. 11 and 15 which in turn rests on the notification under S. 4 of the Act as its foundation, the date of publication of which is the foundation stone. The legislature having designed the horizontal growth in such manner, the collecting scheme which has been made operational prospectively on 24-9-1984 and onwards becomes plain because that is the date on which the amendment comes into effect. When we import this understanding to the scheme of things it becomes evident that a Court when applying sub-sec. (1 A) of S. 23 would do so only if it has in hand an acquisition based upon a notification under S. 4 of the Act issued on 24-9-1984 or thereafter and not to any such notification issued earlier to that date. Same would be the role of the Collector at his end when employing S. 15 and making an award under S. 11 of the Act.

9. Section 30 of the Amendment Act however providing for transitional provision is an exception giving a limited retrospectivity as to the applicability of sub-sec. (1 A) of S. 23 so as to apply to some acquisitions commenced prior to 24-9-1984. The extended applicability is plain from the employment of the word "also" in the opening part. The principal Act having brought in sub-s. (1 A) of S. 23 to the scheme of things was also ordained to apply and was deemed to have applied to two kinds of acquisition proceedings which were covered under sub-cl. (a) and (b) of sub-sec. (1) of S. 30 of the Amendment Act. As has been spelled out in this order earlier both the clauses are not applicable on the instant fact situation, the award herein having been made prior to 30-4-1982 and was final under S. 11, having related back to S. 4 notification of 21-3-1978. The limited retrospection is meant to cover acquisitions regarding which notifications under S. 4 of the Act were operative on the 30th day of April, 1982; the day when the Bill was introduced in the House of People and in which. no award had been made by the Collector before that date (vide Cl. a) as also to notifications issued after 30th day of April, 1982 regarding which award had or had not been made by the Collector before the date of commencement of the Act, i.e., 24-9-1984 (vide Cl. b). To these limited situations is the Court empowered to award under Sub-sec. (1 A) of S. 23 an additional amount in the case of acquisition covered under sub-clauses (a) and (b) of sub-sec. (1) of S. 30 of the Amendment Act in relation to notifications under S. 4 of the Land Acquisition Act issued prior to 24-9-1984. Viewed in this light, the use of sub-sec. (1A) of S. 23 is not available to the Court in present to each and every acquisition, at all and every time, whenever determining compensation under S. 18 of the Act ignoring the date of the notification under S. 4 and its implications. Zora Singh's case (1991 (4) JT (SC) 538) (supra) appear to us to have conferred on the Court a power which it did not have excepting of course if the acquisition fell within the provision of S. 30, sub-sec. (1) of the Amendment Act. The ratio appears to us to be too wide having serious ramification

and thus would require reconsideration.

10. Further, in our opinion, the use of the word 'Court' in sub-sec. (1 A) of S. 23 is of no significance in the context. For that matter each of the sub-sections in S. 23 uses the said expression. The expression 'Court' in the context refers not only to Civil Court (on reference under S. 18) but also to High Court and Supreme Court on appeal. Suppose in a given case, solatium is not awarded or is awarded at a lesser rate, the High Court on appeal can award the same. Similarly, the principles enumerated in sub-sec. (1) are of equal application to the High Court and Supreme Court on appeal. If so, logically it should follow - applying the principle of the said decision - that even the High Court/ Supreme Court can also award the said benefit, if they decide the matter on or after 24-9-1984. Indeed S. 23 is of equal application to Collector. It cannot certainly be contended that the principles contained in and the benefits conferred by S. 23 are not applicable to and cannot be awarded by the Collector. The fact that S. 23 occurs in Part 111 (Reference to Court and Procedure thereof) is of no significance. Now coming to the word 'award' occurring in sub-sec. (1A), the said word is used not as a noun but as a verb. The expression 'award' is not defined in the Act. It is true that the decision of the Civil Court on a reference under S. 18 (whether relating to quantum of compensation or to apportionment thereof) is called an award by sub-s. (1) of Section 26 but at the same time sub-section (2) of Section 23 says that every such award shall be deemed to be a decree and the statement of the grounds of every such award a Judgment within the meaning of Section 2(2) and Section 2(9) respectively of the Code of Civil Procedure, 1908. Be that as it may, we may reiterate that the said expression is used as a verb in the sub-section and not as a noun. Can it be said that the word 'award' cannot be used, or is inappropriate, in the case of a High Court awarding the compensation or any other benefit under the Act? We think, not. The expression 'award' is used in the sense of 'give' or 'giving' and not in any technical sense, as something distinct in character from Judgment and/ or decree.

11. The effect of the decision in Zora Singh's case (1991 (4) JT (SC) 538) (supra) is this: apart from the retrospective operation given by sub-section (1) of Section 30 of the Amendment Act, another dimension of retrospectivity is found in the language of sub-section itself. According to it, the only relevant test is whether the Civil Court (under Section 18) is rendering its decision (award) on or after the commencement of the Amendment Act no other circumstance need be noticed. Even if the acquisition proceedings have begun and award of the Collector made prior to 30-4-1982, this benefit is available so long as the Civil Court (on a reference under Section 18) renders its decision on or after 24-9-1984. It is well to remember that the said provision (sub-sec. (I-A) of Section 23) is a provision in the realm of substantive law. This is also the view expressed in Zora Singh's case (supra); it says so expressly. In the case of substantive provisions, retrospective operation is not presumed unless the Act provides therefor either expressly or by necessary intendment. Ordinarily, therefore, the amended provision would not apply to pending proceedings. Suppose, the amendment had taken away or curtailed an existing benefit, what would be the position? The principle cannot be different, merely because the amendment either confers new benefits or enhances the existing benefits. The Parliament, by enacting Section 30(1) of the Amendment Act has made its intention clear, as to what extent the said provision shall have retrospective operation. We cannot add to it. We must look only to Section 30(1) to determine the ambit and reach of the retrospectivity of Section 23(1-A). In our respectful opinion, the language of sub-section (I-A) is not sufficient to, nor does it warrant, infer another dimension of retrospectivity to it.

12. The opinion expressed by us was also the opinion of a Bench of two Judges of this Court in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama, (1990) 1 SCC 277: (AIR 1990 SC 981), which has of course been overruled in Zora Singh's case (1991 (4) JT (SC) 538) (supra).

The facts in Filip Tiago's case (supra) are also similar to the facts in Zora Singh's case (supra) and the facts of the case before us. There too, award of the Collector was made prior to 30-4-1982 and the decision of the Civil Court on reference under Section 18 rendered subsequent to 14-9-1984, that is on 28th May, 1985. Question arose, whether in such a situation the benefit of Section 23(1-A) can be given to the land-holders. the learned Judges were of the opinion that in such a case the said benefit was not available. The reasoning of the Bench runs thus (at p. 986 of AIR):

"The objective words used in this Sub-section are similar to. those that are used in Section 23(2). It enjoins a duty on the court to award the additional amount at 12 per cent on the market value of the land for the period prescribed thereunder.,Bu't this again is a part of the scheme for determining compensation under Section 23(1) of the Act. It also operates on the market value of the land acquired. It is plainly and distinctly prospective in its operation since market value has to be determined as on the date of publication of notification under Section 4(1). But the legislature has given new starting point for operation of Section 23(1-A) for certain cases. That will be found from Section 30 sub-sections (1)(a) and (b) of the Transitional Provisions."

13. The learned Judges then referred to language of sub-section (1) of Section 30 of the Amendment Act and held that entitlement to the additional amount provided by Section 23(1-A) depends upon either of the clauses in sub-section 1 of Section 30 being satisfied and in no other case. The learned Judges also pointed out, and in our respectful opinion rightly, the distinction in the language used in sub-section (1) and sub-section (2) of Section 30. Whereas sub-section (1) speaks of an award by the Collector alone, sub-section (2) speaks of an award by Collector as well as the Court. This distinction indicates that wherever the Parliament intended that the benefit should be extended even by the Court, it said so expressly.

14. Mr. Krishnamurthy Iyer contends that the decision in Zora Singh's case (1991 (4) JT (SC) 538) (supra) runs counter (to?) the entire basis and reasoning of the decision of the Constitution Bench in Raghbir Singh's case (AIR 1989 SC 1933) (supra). Zora Singh's case (supra) has explained and distinguished Raghbir Singh's case (supra) as delaing with Section 30(2) and not with the question at issue in Zora Singh's case (supra). Since, we are referring to the matter to a larger Bench, we do not wish to express any opinion on this submission of Shri Iyer. It is true that in Raghvir Singh's case (supra) this Court's correlating of sub-section (2) of Section 30 of the Amendment Act with Sub-section (2) of Section 23 of the Principal Act lead the Court to award enhanced solatium and enhanced interest as provided by sub-clause (b) of Section 15 and Section 18 of the Amendment Act, but that field is totally a separate field and cannot have any bearing to the controversy in hand. It is to be remembered that the provisions in the Parent Act remain good unless amended or altered at a later stage. The transitional provisions in the Amendment Act, on the other hand, cover matters which are in the pipeline and are in transit till reaching their destination. On clearance of the transitional load the transitional provisions exhaust themselves having outlived their utility. This in our view is also an aid which could go towards re-consideration of the ratio in Zora Singh's case (supra).

15. Mr. Krishnamurthy Iyer, learned counsel for the State of Kerala raised yet another contention which we must deal with. It is this: In the State of Kerala, the Kerala Land Acquisition Act, 1961 (which had received the assent of the President) was in force until 24-9-1984 when the Land Acquisition Act, 1894 was extended to that State by virtue of the Amendment effected in Section 1(2) of the Land Acquisition Act, 1894 by the Amendment Act 68 of 1984. All the proceedings for acquisition of land until then were being taken under the Kerala Act. Only with effect from 24-9-

1984, has the Central Act come into operation. If so, none of the provisions of the Central Act can have retrospective effect so as to slide into the operation of Kerala Act. The provisions of Central Act, even as amended in 1984, do operate only on and from 24-9-1984 and cannot be given any retrospective effect - it is submitted. We cannot agree. Sub-section (2) of Section 1 of the Principal Act, prior to its amendment in 1984, applied the said Act to whole of India except "part B States". By the said ,Amendment Act, the words "part B States" were substituted by the words "the State of Jammu and Kashmir". The effect is that the Central Act stood extended to part B States as well i.e., to the entire country except the State of Jammu and Kashmir. It is true that this extension is on and with effect from 24-9-1984 but by virtue of this very Amendment Act, certain provisions of the Principal Act, as amended by the Amendment Act, were given retrospective effect to the extent specified. In such a case it would be obvious that the said retrospective operation is equally operative and effective. We see no inconsistency in saying so. Indeed, saying otherwise would introduce an element of inconsistency. It has been held by this Court in *Kanthimathy Plantation Pvt. Ltd. v. State of Kerala* (AIR 1990 SC 761) that the effect of amendment of sub-section (2). of Section 1 of the principal Act is the same as the repeal of the Kerala Act and that same consequences follow. It has been held that Section 6 of the General Clauses Act 1897 applies in such a situation, even though, as a matter of fact, the Kerala Act becomes inoperative not by any repealing provision but by virtue of clause (1) of Art. 254 of the Constitution. Accordingly we reject the contention of Shri Iyer.

16. For the reasons recorded hereinabove the matter is referred to a larger bench for considering the correctness of the decision in *Zora Singh's case* (1991 (4) JT (SC) 538) (supra). The papers may accordingly be placed before the Hon'ble the Chief Justice of India for appropriate orders in this behalf. Order accordingly.

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