

Laxmi Chand and Others

Vs

Gram Panchayat, Kararia and Others

SLP (C) No. 23740 of 1995

(K. Ramaswamy, B. N. Kirpal JJ)

06.11.1995

ORDER

1. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') acquiring land for construction of a school for public purpose, was published on 16-4-1969. Validity thereof was challenged in CMP No. 60 of 1969. The High Court by its order dated 23-1-1970 dismissed the writ petition. Award under Section 11 was made on 24-9-1974. Validity of the acquisition and of the award was challenged by filing a civil suit on 3-1-1975 for a declaration that the land could not be acquired. The acquisition proceedings having been once dropped by the Land Acquisition Officer by his proceedings dated 13-7-1973, he was devoid of power to reopen the same at the behest of the Gram Panchayat. The civil court on a preliminary issue held that the suit was not maintainable. The learned Single Judge by his judgment and order dated 23-11-1993 upheld the decision of the civil court. The Division Bench in LPA No. 1 of 1994 by its decision dated 1-1-1994 dismissed the same. Thus this special leave petition.

2. The contention raised by the learned counsel for the petitioner is that the acquisition proceedings having been dropped by the Land Acquisition Officer, he had no jurisdiction or power to reopen the same and to make the award under Section 11 of the Act. The award is, therefore, clearly illegal for want of jurisdiction. It would appear that after the High Court had upheld the validity of the notification under Section 4(1) and the declaration under Section 6, an application was filed in the High Court for claiming value of the property in which the High Court determined market value at Rs 7000 per acre and also other values of the trees and buildings etc. and the application was dismissed. The order dated 23-1-1970 was upheld by this Court by dismissing the special leave petition. While the enquiry was in progress, it would appear that the Gram Panchayat had stated before the Land Acquisition Officer that it had no funds so as to proceed with the award and requested him to drop the proceedings. On that basis, a report was submitted to the Government and the Land Acquisition Officer had stopped further action. The Government did not accede to the request. No notification under sub-section (1) of Section 48 of the Act withdrawing acquisition of land, possession of which had not been taken, was published in the Gazette. Admittedly, the Government thereby had neither withdrawn from the acquisition nor published the same in the Gazette. Therefore, the mere fact that the Land Acquisition Officer had stopped further action to make the award did not divest him of his power and jurisdiction to make the award. It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the civil court to try all suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification under Section 4 and declaration under Section 6 of the Act are required to be published in the manner contemplated thereunder. The inference gives conclusiveness to the public purpose and the extent of the land

mentioned therein. The award should be made under Section 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference under Section 18 and a further appeal under Section 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated under Section 48 requires to be adhered to. If possession is taken, it stands vested under Section 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court.

4. It is true that the Gram Panchayat had initially expressed about its lack of funds but soon thereafter it came forward to proceed with the acquisition and thus lack of funds with the Gram Panchayat does not divest the power and jurisdiction of the Land Acquisition Officer to proceed with the enquiry under Section 11 and to make the award thereunder. The Land Acquisition Officer does not lack jurisdiction or power to make the award. The civil court as well as the High Court thereby committed no error of law warranting our interference.

5. The special leave petition is accordingly dismissed.