State of T. N. and Another

Vs

Mahalakshmi Ammal and Others

Civil Appeals No. 11555 of 1995 with No. 11556 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

16.11.1995

ORDER

1. Delay condoned.

2. Leave granted.

3. A notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was published in the State Gazette on 26-7-1978. An enquiry under Section 5-A of the Act was made followed by a declaration under Section 6 of the Act, published on 3-6-1980. The Amendment Act 68 of 1984 came into force with effect from 24-9-1984. The Land Acquisition Collector made his award on 22-9-1986. The possession was taken on 24-11-1986. It would appear that in respect of Survey No. 2/11, a further award was made on 31-8-1990.

4. The respondents filed a writ petition under Article 226 of the Constitution in the High Court in 1987 challenging the validity of the notification under Section 4(1) and the declaration under Section 6 of the Act on the ground of delay in making the declaration. The learned Single Judge in his order dated 15-9-1987, dismissed the writ petition on the ground of laches. The Division Bench following the judgment of this Court in State of T.N. v. A. Mohammed Yousef [(1991) 4 SCC 224] allowed the writ petition holding that the scheme was vague and it quashed the notification published under Section 4(1) and declaration under Section 6 of the Act on that basis. Since the controversy on the question of vagueness and the failure to make the scheme was already considered by a Bench of three Judges of this Court in State of T.N. v. L. Krishnan [(1996) 1 SCC 250 : JT (1995) 8 SC 1] on 1-11-1995, the judgment of the Division Bench can no longer be sustained.

5. Shri S. Sivasubramaniam, learned Senior Counsel appearing for the respondents, contended that the Government having excluded the lands in Surveys Nos. 197/2 etc. (which is marked 'A' in the plan submitted by the respondents) and the lands covered in Survey No. 95/1 to an extent of one acre and four cents marked as 'B' in the same plan, the respondents are also entitled to the exclusion of their land and the non-exclusion thereof amounts to invidious discrimination. It is also further contended that in the year 1976-1980 three GOs, viz., MS No. 837 Housing dated 15-6-1976, MS No. 413 Housing and UD dated 3-3-1979 and MS No. 57 Housing and UD dated 12-1-1980 having excluded some lands, the respondents' lands, which form part of the scheme, also need to be excluded and, therefore, non-exclusion of the land marked 'G' in the plan filed by them amounts to arbitrary exercise of power conferred under Sections 4(1) and 6 of the Act and is violative of Article 14 of the Constitution. It is also further contended that the lands in Surveys Nos. 2/5, 2/11 and 2/12 were situated in Alagapuram Pudur Village and having realised that these lands were not covered under the initial notification under Section 4(1), the errata having covered those lands, the

notification must be deemed to have been published after the errata was published. Thereafter, no separate enquiry under Section 5-A was conducted. A declaration made under Section 6 of the Act without conducting enquiry under Section 5-A is invalid in law. Notices under Sections 9 and 10 of the Act were served on 120 persons in a single day including a dead person. So service was not a valid one and the award under Section 11 was non est. It is also contended that the appellants having physically remained in possession of the lands, the Panchnama by Land Acquisition of taking possession and handing it over to the Housing Board is also illegal. It is further contended that from 1978 till the date of making the award in 1990, the respondents were denied enjoyment of the lands. Therefore, the delay itself would be a ground to set aside the award. Alternatively, it is contended that they should be compensated considerably by awarding interest thereunder. Mr C.S. Vaidyanathan, the learned Senior Counsel appearing for the appellants, resisted these contentions.

6. Having considered the respective contentions of the counsel for the parties, we see no force in any of the contentions raised by Shri Sivasubramaniam. It is true that the lands marked 'A' and 'B' as per the respondents' plan appear to have excluded. It would appear that as regards the land marked 'A', there is a litigation pending. As regards the land marked 'B', it appears to be far interior and we do not have any material on the basis of which exemption came to be made. It is difficult for us to go into the validity or the purpose. The circumstances or reasons for which the exemption came to be made to the land of an extent of one acre and four cents covered in Survey No. 195/1 etc. are also not available on record. With regard to the lands marked 'C' and 'D' it is seen that it was the reference court who excluded these lands which is the subject-matter of appeals pending in the High Court. The exclusion of those lands cannot be a ground that the lands marked 'G' which are the subject-matter in these appeals have also to be excluded.

7. It is seen that in the first two GOs referred to earlier, the Government laid down guidelines for exclusion of lands which are the subject-matter of layout approved by the Housing Board. The Government having realised the fault in issuing the above guidelines, thereafter issued order in GO No. 583 dated 11-3-1983 of the Housing and Urban Development Department withdrawing all the guidelines issued in the GOs referred to above with immediate effect. Thus, it could be seen that the Government itself having realised the misapplication of the guidelines laid by it and disastrous effect on the execution of the Housing Schemes prepared by the Housing Board or entrusted to it by the Government or local authorities, it withdrew the GOs with immediate effect. It is seen that respondents' lands is abutting the road Omluer to Salem and practically it would be the gateway to the scheme. Under those circumstances, if the lands are excluded from the scheme, the entire scheme gets frustrated. Under those circumstances, we do not find any justification to direct the Government for exclusion of the lands on the above grounds.

8. It is true that the Government having realised that the lands were initially notified to be acquired but did not cover the survey numbers being situated in the adjacent villages, the errata notification was published and included to lands in Surveys Nos. 2/5, 2/11 and 2/12. Once errata was published, it dates back to the date of initial Section 4(1) notification, namely, 26-6-1978. It cannot be considered to be a fresh notification issued under Section 4(1). It is not in dispute that the respondents, in fact, filed their objections to the notice issued under Section 5-A and Rule 3 of the rules made by the State Government. Shri Sivasubramaniam, is unable to place before us the nature of the objections raised by the respondent-petitioners. But the fact remains that the respondents had the opportunity and, in fact, they did participate in Section 5-A enquiry. Therefore, the declaration made under Section 6 does not get vitiated.

9. It is well-settled law that publication of the declaration under Section 6 gives conclusiveness to

public purpose. Award was made on 26-9-1986 and for Survey No. 2/11 award was made on 31-8-1990. Possession having already been undertaken on 24-11-1981, it stands vested in the State under Section 16 of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. The initial award having been made within two years under Section 11 of the Act. The fact the subsequent award was made on 31-8-1990 does not render the initial award invalid. It is also to be seen that there is stay of dispossession. Once there is stay of dispossession, all further proceedings necessarily could not be proceeded with as laid down by this Court. Therefore, the limitation also does not stand as an impediment as provided in the proviso to Section 11-A of the Act. Equally, even if there is an irregularity in service of notice under Section 9 and 10, it would be a curable irregularity and on account thereof, award made under Section 11 does not become invalid. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party but subject to Section 28-A. Possession of the acquired land would be taken only by way of a memorandum, Panchnama, which is a legally accepted norm. It would not be possible to take any physical possession. Therefore, subsequent continuation, if any, had by the erstwhile owner is only illegal or unlawful possession which does not bind the Government nor vested under Section 16 divested in the illegal occupant. Considered from this perspective, we hold that the High Court was not justified in interfering with the award.

10. Delay in making the first award is compensated by award of additional amount under Section 23(1-A) and interest under Section 28 of the Act as amended by Act 68 of 1984 which has taken care to set off the delay in making the award. Under these circumstances, the respondents are adequately compensated for loss, if any, for denial of enjoying the lands from the date of taking possession till date of deposit.

11. Considered from these perspectives, we are of the view that the order of the High Court made in Writ Appeal No. 1884 of 1987 on 18-3-1993 requires interference. It is accordingly set aside and the order of the learned Single Judge stands restored.

12. The appeals are allowed accordingly. The writ petitions stand dismissed. Parties are directed to bear their own costs.