

Senjeevanagar Medical & Health Employees' Cooperative Housing Society

Vs

Mohd. Abdul Wahab and Others

Civil Appeal No. 5812 of 1983

(K. Ramaswamy, S. Saghir Ahmed JJ)

08.02.1996

JUDGMENT

K. RAMASWAMY J.

1. This appeal by special leave arises from the judgment of the Andhra Pradesh High Court made in Writ Appeal No. 692 of 1982 on 2-3-1983. Notification under Section 4(1) of the Land Acquisition Act (1 of 1894) (for short "the Act") acquiring the lands in question to provide house sites to Class IV employees of the appellant Society, was published in the State Gazette on 11-1-1979. The substance of the notification was published in the locality on 17-3-1979. Enquiry under Section 5-A of the Act was conducted and the Land Acquisition Officer (LAO) submitted his report to the Government on 19-6-1979. Declaration under Section 6 was published on 29-3-1980. The LAO after conducting enquiry made his award under Section 11 on 13-12-1980 and notice thereof was served on the respondents. It is stated that since the respondent did not attend the office of the LAO, as directed, on 1-1-1981, the compensation was deposited in the Court of the Subordinate Judge. It is stated that after LAO had taken possession of the land from the respondents, he had handed over the land to the appellant but actual date was not mentioned. It is also stated by the appellants that thereafter plots were laid out and were allotted to its members and some members had started construction of their houses. At that stage, the respondents had filed the writ petition on 9-8-1982 and the Full Bench following its judgment in K. Yadaiah v. Govt. of A.P. [(1983) 1 ALT 233] quashed the notification and the declaration holding that the notifications under Section 4(1) were not simultaneously published in the Gazette and in the locality. Thus this appeal by special leave.

2. Shri C. Sitaramaiah, learned Senior Counsel for the appellant, contended that in Deepak Pahwa v. Lt. Governor of Delhi [(1984) 4 SCC 308 : (1985) 1 SCR 588] this Court had overruled the Full Bench decision in Yadaiah case and approved of the ratio in various Division Bench judgments of that Court referred therein. The State Legislature amended the Act by Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983 (Act 9 of 1983) (for short "the Validation Act") giving retrospective effect, viz., w.e.f. 12-9-1975, the date on which the Land Acquisition (Andhra Pradesh Amendment) Act, 1976 had come into force. Though the Validation Act retrospectively prescribes publication of the substance of the Section 4(1) notification within 40 days from the date of its publication in the District Gazette, the publication of the substance even after 40 days does not become invalid by the ratio in Deepak Pahwa case and by operation of clause (b) of Section 4 of the Validation Act. He also contended that since possession had already been taken, after the award was made, the land stood vested in the State and the beneficiaries, free from all encumbrances. The High Court, therefore, was not right in its quashing the Section 4(1) notification and Section 6 declaration. It is also contended that the Land Acquisition (Amendment) Act (68 of 1984) provides procedure for publication of the notification in the Gazette, newspapers and the local publication

and limitation for publication of the declaration under Section 6 within one year from last of the dates of the publication under Section 4(1) which would indicate that various publications under Section 4(1) could be done at periodical intervals without time-limit within the maximum period of one year. The Validation Act thereafter also does not hold the field.

3. Shri A. Subbarao, learned counsel for the respondents, contended that after the Validation Act was given retrospective effect from 12-9-1975 and local publication made after 40 days, the notification under Section 4(1) became invalid; consequently, the declaration under Section 6 is non est. He placed reliance on Land Acquisition Officer, Hyderabad Urban Development Authority v. Mohd. Amri Khan [(1986) 1 SCC 3] and C.K. Narayana Chary v. Pothepalli Ashanna [(1986) 1 SCC 9] the ratio wherein it was held that local publication after 40 days invalidates Section 4(1) notification.

4. The respective contentions give rise to the question : whether the view of the High Court is correct in law? The Land Acquisition (Andhra Pradesh Amendment) Act, 1976 was enacted with a view to accelerate the pace of acquisitions to provide house sites to the poor and to empower the Collectors to issue notification under Section 4(1) and the declaration under Section 6 and their publication in the respective District Gazettes and to make payment of compensation to the lands so acquired if the compensation does not exceed Rs. 500 and in other cases in instalments not exceeding Rs. 500 with interest at 6% on such instalments.

5. In furtherance thereof, acquisition of the lands of private persons on a massive scale was undertaken in all the districts of the State. Collectors exercised power under Section 17(4) dispensing with the enquiry under Section 5-A and notifications under Section 4(1) and declarations under Section 6 were simultaneously published in the Gazette. But the officers at the lower level delayed local publication of the substance of the notification under Section 4(1). Consequentially, a spate of litigation had sprung up in Andhra Pradesh High Court invariably challenging the validity of the notifications.

6. As noticed by this Court in Deepak Pahwa case, several Division Benches of the High Court have taken consistent view that simultaneous publication of the notification under Section 4(1) in the Gazette and local publication of its substance was not mandatory. A Single Judge and Division Bench had struck a discordant note leading to reference to the Full Bench which in Yadaiah case had held that the publication of the notification in the Gazette and the local publication of its substance should be done on the same day. Following that view, the same Full Bench quashed the impugned notification and declaration covered in that appeal. The Validation Act expressly referred to the said decision and validated with retrospective effect all the notifications issued earlier than the date on which the A.P. Amendment Act, 1976 came into force, removing the base of the Full Bench judgment. Section 2 of the Validation Act provides that the Collector shall, within 40 days from the date of the publication of such notification, cause the substance of the notification published. This led to further litigation.

7. A three-Judge Bench was required to consider whether delay in giving public notice in the locality makes the notification invalid. Yadaiah case was cited in support of the contention. Therein a combined notification under Sections 4 and 17(4) and declaration under Section 6 were published in the Gazette on 18-6-1984 and public notice of the substance of the notification under Section 4 was given in the locality on 17-7-1984 with a delay of 29 days. Post-notification delay of eight years due to inter-departmental correspondence was pressed into service to hold that there was no real urgency. Legality of invoking urgency clause and consequential omission to hold enquiry under

Section 5-A was under challenge.

8. This Court had held that Section 4(1) does not prescribe that public notice of the substance of the notification should be given in the locality simultaneously with the publication of the notification in the Official Gazette or immediately thereafter. They are two steps required to be taken under Section 4(1) before taking further steps under sub-section (2). The time factor is not a vital element and there is no warrant to read the words 'simultaneously' or "immediately thereafter" in Section 4(1). They are not required to be done simultaneously or immediately thereafter. Contemporaneity may involve a gap of time and by the very nature of things, the publication in the Official Gazette and the public notice in the locality must necessarily be separated by a gap of time. This does not mean that the publication and the public notice may be separated by a long interval of time. What is necessary is that the continuity of action should not appear to be broken by a deep gap. If there is publication in the Gazette and if there is public notice in the locality, the requirements of Section 4(1) must be held to be satisfied unless the two are unlinked from each other by a gap of time so long as it may lead one to the prima facie conclusion of lack of bona fides in the proceedings for acquisition. It was held that when the Government exercises power under Section 17(4), it obviously feels that urgency is such that it does not brook delay and, therefore, the Government directs that possession of the land be taken immediately on publication of the declaration under Section 6 and followed by notice under Section 9. Delay of eight years on the part of the tardy officials to take further action in the matter of acquisition is not sufficient to nullify the urgency which existed at the time of issuing the notification and to hold that there was never any urgency. This Court overruled the Full Bench judgment in Yadaiah case and approved of the Division Bench judgments of the Andhra Pradesh High Court, apart from other cases.

9. In Mohd. Amri Khan case and C.K. Narayana Chary case this Court considered the effect of the Validation Act and another Bench of three Judges held that after the Validation Act had come into force with retrospective effect, despite the law in Deepak Pahwa case, the Validation Act is required to be given effect to. Notification and public notice of the substance thereof has to be given in the locality within 40 days from the date of the publication of Section 4(1) notification which would apply to every notification issued by the appropriate Government after 12-9-1975. In case the substance of such notification was not given in the locality within 40 days from the date of the publication of the notification in the Gazette, it would introduce a fatal infirmity invalidating such notification. In that case a delay of more than 40 days in the local publication of the substance of the notification violated the mandate enacted in sub-section (1) of Section 4 as it stood from and after 12-9-1975. Therefore, it was liable to be struck down.

10. Parliament enacted Amendment Act 68 of 1984 prescribing the procedural steps in publication of the notification under Section 4(1) and declaration under Section 6 without prescribed time-limit with consequences of non-compliance thereof and in Section 11-A declaring that if the steps respectively prescribed therein are not taken, the acquisition entails lapse. In other words, Parliament evinces that neither simultaneous nor immediate local publication of substance is insisted upon. But compliance thereof and publication in two newspapers are required to be done. The object is to put the owner or interested person on notice of acquisition of the land for public purpose. In case of enquiry under Section 5-A it should also be done and all the steps should be taken within one year from the last of the dates of the publication of notification under Section 4(1). Otherwise the acquisition stands lapsed. Even thereafter award should be made within two years from the date of the publication of Section 6 declaration. Publication of Section 4(1) notification in the Official Gazette, its substance in the locality and also publication of the notification in two local newspapers is envisaged but no time-limit for their compliance has been prescribed thereunder. If urgency

power under Section 17(4) is not invoked, notice under Section 5-A is required to be given to the owner and then enquiry is conducted after giving opportunity to the owner or interested person. Thereafter, declaration should be published within one year from last of the dates of the publication under Section 4(1). In other words, from 24-9-1984, all the prescribed procedural steps should be taken but without time schedule. The declaration should be published within one year. Maximum outer limit was prescribed. The Central Act 68 of 1984 and Validation Act were enacted under Entry 42 of List III (Concurrent List) of the Seventh Schedule to the Constitution. By operation of proviso to Article 254 of the Constitution, the Amendment Act 68 of 1984 is made operative and it has occupied the same field w.e.f. 24-9-1984. In *Gauri Shankar Gaur v. State of U.P.* [(1994) 1 SCC 92] this Court surveyed the effect of the Amendment Act vis-a-vis the U.P. *Awas Evam Vikas Parishad Adhiniyam, 1965* and held in paragraphs 39 and 40 that unless both the Acts are inconsistent and cannot operate harmoniously, the State Act prevails over the Central Act but to the extent of repugnancy the State Act becomes void since it is not fully consistent with the provisions of the Amendment Act. In that case, it was held that they were intended to act independently since the State law was enacted under Entries 56 and 66 of List II (State List) while the Amendment Act was enacted under Entry 42 of the Concurrent List.

11. The rigour of 40 days thereby under the Validation Act got diffused w.e.f. 24-9-1984 since it is inconsistent with Amendment Act 68 of 1984. It would be seen that the Validation Act relates to acquisition of land for providing house sites to the poor whereunder the urgency power under Section 17(4) was invoked and possession was not taken. The notification under Section 4(1) and declaration under Section 6 were simultaneously published. But public notice of the substance of the notification was not given simultaneously. But for the Full Bench decision, law did not insist upon simultaneous action which was an impossibility and concept of simultaneous action was judicial interpretation and its effect was diffused by the Validation Act. It is to remember that the acquisition was to provide housing accommodation to the poor. The State Government always exercises the power of publishing the notification under Section 4(1) and the declaration under Section 6 for acquiring the properties in urban areas. The enquiry under Section 5-A was not dispensed with. The declaration under Section 6 was published only after the enquiry under Section 5-A had been conducted as in the present case. The need, therefore, to make simultaneous local notice of the substance was not the requirement of law and was so declared by this Court in *Deepak Pahwa* case and also several decisions of various Division Benches of the High Courts. The Full Bench judgment was primarily in relation to the lands in rural areas to provide house sites to the poor. The Full Bench also did not notice the distinction since common question was argued and the main concentration was only of the acquisitions for providing house sites to the poor. The same was repeated in *Mohd. Amri Khan* case. *C.K. Narayana Chary* case closely followed the heels of *Mohd. Amri Khan* case. Therefore, the Validation Act was not applicable to the acquisition made pursuant to the notification published by the State Government in its State Gazette.

12. That apart, as facts disclose, the award was made on 24-11-1980 and the writ petition was filed on 9-8-1982. It is not in dispute that compensation was deposited in the Court of the Subordinate Judge. It is asserted by the appellant Society that possession of the land was delivered to it and the land had been divided and allotted to its members for construction of houses and that construction of some houses had been commenced by the date the writ petition was filed. It would be obvious that the question of division of the properties among its members and allotment of the respective plots to them would arise only after the Land Acquisition Officer had taken possession of the acquired land and handed it over to the appellant Society. By operation of Section 16 the land stood vested in the State free from all encumbrances. In *Satendra Prasad Jain v. State of U.P.* [(1993) 4 SCC 369], the question arose : whether notification under Section 4(1) and the declaration under

Section 6 get lapsed if the award is not made within two years as envisaged under Section 11-A? A Bench of three Judges had held that once possession was taken and the land vested in the Government, title to the land so vested in the State is subject only to determination of compensation and to pay the same to the owner. Divesting the title to the land statutorily vested in the Government and reverting the same to the owner is not contemplated under the Act. Only Section 48(1) gives power to withdraw from acquisition that too before possession is taken. That question did not arise in this case. The property under acquisition having been vested in the appellants, in the absence of any power under the Act to have the title of the appellants divested except by exercise of the power under Section 48(1), valid title cannot be defeated. The exercise of the power to quash the notification under Section 4(1) and the declaration under Section 6 would lead to incongruity. Therefore, the High Court under those circumstances should not have interfered with the acquisition and quashed the notification and declaration under Sections 4 and 6 respectively. Considered from either perspective, we are of the view that the High Court was wrong in allowing the writ appeal.

13. Consequentially, the writ appeal stands dismissed and the order passed by the learned Single Judge in the writ petition stands restored. The appeal is accordingly allowed, but, in the circumstances, without costs.