

Rev. Father Brain E Fernandes and Others

Vs

State of Maharashtra and Others

Civil Appeals No. 3647 of 1996 with No. 3648 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

12.02.1996

ORDER

1. Leave granted.

2. We have heard the learned counsel on both sides.

3. Notification under Section 4(1) of the Land Acquisition Act, 1894 was published in the State Gazette on 26-7-1965 and the declaration was published on 17-5-1969. The award came to be made on 22-9-1986 within the period provided under Section 11-A incorporated by the Amendment Act 68 of 1984. Therefore, the appellants have approached the High Court. The High Court dismissed their WP No. 2694 of 1986 by order dated 14-6-1995. Thus these appeals by special leave.

4. Shri Sorabjee, learned Senior Counsel for the appellants, has contended that in similar cases relating to the same Survey No. 294, the High Court had quashed the declaration under Section 6 relegating the parties to an enquiry under Section 5-A on the ground that the erratum notification was published for the first time without giving any opportunity to the appellants and was followed by a declaration under Section 6. Therefore, the action of the authorities in this case also is illegal. We find no force in the contention. As noted by the High Court in the order, the only defect as noted was that instead of survey numbers, guntha numbers have been given in the erratum relating to specification of survey numbers. In other words, the identity of the land was not in dispute and the land was also part of the notification under Section 4(1). Therefore, there is no illegality in the notification under Section 4(1) as originally published. In fact, the enquiry under Section 5-A after giving an opportunity to the appellants was held and thereafter declaration under Section 6 was published. No objection in this behalf was taken. Under those circumstances, we do not find any force in the contention of Shri Sorabjee. It is true that the High Court had quashed the declaration under Section 6 but nonetheless an opportunity had been given to all those persons and thereafter Section 6 declaration would follow. The only condition precedent is that the acquisition would serve public purpose. So long as the public purpose subsists, the enquiry under Section 5-A shall be conducted and the competent authority would take a decision whether the public purpose still subsists to sustain the notification under Section 4(1). Under those circumstances, we do not think that there is any force in the contention of Shri Sorabjee.

5. It is then contended by Shri Sorabjee that this Court in *Ram Chand v. Union of India* [(1994) 1 SCC 44] would have interfered and quashed the acquisition under Section 4(1) for a long delay on the part of the authorities, but for the intervention of third party rights. In this case, since the appellants are still in possession and no third party rights have been created, the notification requires to be quashed. We find no force in the contention. It is true that admittedly, there is long inaction on

the part of the authorities. As noted by this Court, since limitation has not been prescribed for the actions to be pursued by the authorities, after the publication of the declaration under Section 6 inordinate delay is being caused in making the award and offering the amount. With a view to remove the defect, the Amendment Act of 1984 was brought on statute and the limitation under Section 11-A was introduced enjoining the State to make the award within two years from the date of the publication of the notification required under Section 6. On failure thereof, the notification under Section 4(1) and the declaration under Section 6 shall stand lapsed. In this case, immediately after the Amendment Act had come into force, within two years, the award under Section 11 was made. But this Court noticing the injustice that would be meted out in determination of the compensation on account of long lapse of time, directed in Ram Chand case [(1994) 1 SCC 44] to pay additional amount of 12% per annum from the date of the notification under Section 4(1). In that case, within two years from the date of the Aflatoon case [Aflatoon v. Lt. Governor of Delhi, (1975) 4 SCC 285], i.e., 24-8-1976. The same ratio applies to the facts in this case. The respondents are directed to pay the additional amount of 12% per annum to the appellants from 17-5-1969, the date of the declaration since after the declaration, they kept over the matter for a long time.

6. The appeals are accordingly allowed to the above extent. No costs.