

Jaipur Development Authority

Vs

Sita Ram and Others

Civil Appeals Nos. 704-731 of 1997

03.02.1997.

ORDER

1. Leave granted.

2. These appeals by special leave arise from the judgment dated 9-9-1993 of the Division Bench of the Rajasthan High Court made in CWP No. 1124 of 1984 and batch.

3. Notification under Section 52 of the Rajasthan Urban Improvement Act, 1959 was published on 8-10-1979. Thereafter, the Jaipur Development Authority took a decision after the Jaipur Development Authority Act had come into force to continue the acquisition under the repealed Act. Consequently, fresh notification was issued on 20-4-1984. The same came to be challenged in the writ petitions. The Division Bench of the High Court has held that unless the scheme under the Jaipur Development Authority Act has been properly framed, notification issued is not valid in law. This question was considered by this Court in *Pratap v. State of Rajasthan* [(1996) 3 SCC 1]. In fact the decision under appeal was expressly held not a good law. This Court had held thus : (SCC pp. 9-10, para 14)

"There is also no merit in the contention of the learned counsel for the appellants that the decision of the Division Bench of the Rajasthan High Court rendered in 1993 in *Narain* case [*Narain v. State of Rajasthan*, (1993) 2 West LC (Raj) 738 : (1993) 2 WLN 527] can in any way affect the present proceedings. Firstly, the said decision of the Division Bench of the Rajasthan High Court is not final because the Special Leave Petitions (C) Nos. 3100-3127 of 1944 have been filed and the same are pending in this Court; secondly this decision has not been approved by a Full Bench of the Rajasthan High Court in its judgment dated 1-11-1995 in *Urban Improvement Trust v. State of Rajasthan* [Special CA No. 255 of 1995 (DB)] and the other connected cases. In this judgment, dealing with *Narain* case [*Narain v. State of Rajasthan*, (1993) 2 West LC (Raj) 738 : (1993) 2 WLN 527] the Full Bench observed as follows :

'The Division Bench of this Court in the case *Narain v. State of Rajasthan* [*Narain v. State of Rajasthan*, (1993) 2 West LC (Raj) 738 : (1993) 2 WLN 527] has held that the acquisition proceedings cannot be taken in the absence of sanctioned notified scheme. This view has been taken by interpreting only para 9 of the Supreme Court decision of *Gandhi Grah Nirman Sankhari Samiti Ltd. case* [*Gandhi Grah Nirman Sankhari Samiti Ltd. v. State of Rajasthan*, (1993) 2 SCC 662] to the facts and circumstances of the case before the Division Bench. Consideration of paras 8 and 11 of the Supreme Court decision does not find place in the decision of the Division Bench. As stated above, the combined effect of paras 8, 9 and 11 of the Supreme

Court decision seems to be otherwise. With utmost respect, it is difficult to agree with the observations made and view expressed by the Division Bench in the case of Narain [Narain v. State of Rajasthan, (1993) 2 West LC (Raj) 738 : (1993) 2 WLN 527] as regards the decision of the Supreme Court in the case of Gandhi Grah Nirman Sahkari Samiti Ltd. [Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan, (1993) 2 SCC 662].'

It is indeed unfortunate that the judgment of the Division Bench in Narain case [Narain v. State of Rajasthan, (1993) 2 West LC (Raj) 738 : (1993) 2 WLN 527] was relied on, when the same had been overruled by the Full Bench of that Court without referring to the Full Bench decision. Furthermore even on merits we find that the said decision of the Division Bench of the Rajasthan High Court in Narain case [Narain v. State of Rajasthan, (1993) 2 West LC (Raj) 738 : (1993) 2 WLN 527] does not lay down the correct law and the later decision of the Full Bench is correctly decided. The contention which was raised before the High Court, and it succeeded, in Narain case [Narain v. State of Rajasthan, (1993) 2 West LC (Raj) 738 : (1993) 2 WLN 527] was that there could be no proceedings for acquisition which do not conform with the provisions of the master plan inasmuch as the master plan shows one particular use for the land in question, the said land could not be acquired for a different purpose. It was further contended that without framing of a scheme land could not be acquired under Section 52 of the said Act. In upholding this contention the High Court placed reliance on the two-Judge Bench decision of this Court State of T.N. v. A. Mohd. Yousef [(1991) 4 SCC 224]."

4. Even the decision in State of T.N. v. Mohd. Yousef [(1991) 4 SCC 224] has been overruled by a later decision of a three-judge Bench of this Court in State of T.N. v. L. Krishnan [(1996) 1 SCC 250]. Therefore, the view of the High Court that framing of a scheme is a precondition for acquisition of land is not a correct proposition of law. The notification for acquisition cannot be quashed on that account.

5. The appeals are accordingly allowed. The judgment of the High Court stands set aside. Consequently, the writ petitions stand dismissed. No costs.