

SUPREME COURT OF INDIA

Tulsi Co-Operative Housing

Vs.

State of Andhra Pradesh

(K.T.Thomas and M.Srinivasan JJ.)

14.09.1999

JUDGMENT:

SRINIVASAN, J.

There are three sets of appeals. Civil Appeal Nos. 6986-87 of 1994 are filed by Tulsi Co-operative Housing Society, Hyderabad (hereinafter referred to as the 'Society'). Civil Appeal Nos. 6988-6991 of 1994 are by the State of Andhra Pradesh (hereinafter referred to as the 'Government'). Civil Appeal Nos. 6992-6993 of 1994 are by Syed Azam (hereinafter referred to as the 'landowner'). 2. The Society entered into an agreement in April 1975 with the land owner for purchase of an extent of 24 acres of land and paid in advance a sum of Rs.20,000/-. In June 1975, the Govt. issued a Notification under Section 4 (1) of the Land Acquisition Act (hereinafter referred to as 'Acquisition Act') for acquiring an extent of 18.03 acres out of the subject-matter of these proceedings for purposes of Housing Project under HUDCO Scheme. The Notification included an extent of 2 acres belonging to another person with which we are not concerned. The Government also invoked urgency clause under Section 17 (4) of the Acquisition Act and dispensed with enquiry under Section 5A of the said Act. The acquisition proceedings were at the instance of Municipal Corporation of Hyderabad. The Urban Land (Ceiling & Regulations) Act, 1976 (hereinafter referred to as the 'Ceiling Act') came into force on 17.2.1976. The land owner and the Society filed an application in May 1976 for grant of exemption from the provisions of the Ceiling Act under Section 20(1)(b) of the said Act. It was followed by a similar application in June 1977. In April 1978 the Government issued a Notification under Section 6 of the Acquisition Act. In October 1978 the applications for exemption filed under the Ceiling Act were rejected. Towards the end of August 1979 further proceedings under Section 9 of the Acquisition Act were taken by the Government. Meanwhile, a fresh application for exemption under the Ceiling Act was filed in December 1978. That was partly granted by the Government to the extent of 14000 sq. mtrs. of land. Another application was filed in May 1980 for grant of exemption of all the lands from the provisions of the

Ceiling Act. That was granted in September 1980 in GOMS No. 4093. 3. The Notifications under the Acquisition Act were challenged in two writ petitions - one by the Society and the other by the land owner. By interim orders passed by the High Court, further proceedings were stayed. However, on 28.1.1982 both the writ petitions were dismissed. Two appeals were filed. The miscellaneous petition for stay of further proceedings in acquisition pending the appeals was dismissed by Division Bench on 4.2.82. The Government took possession of the lands on 12.2.1982. 4. It should be mentioned here that the proceedings under the Acquisition Act were for the benefit of Bagh Amverpet Welfare Society (hereinafter to be referred to as 'BAW Society'). The said BAW Society got impleaded as party in the writ petitions in which the acquisition proceedings were challenged. The writ appeals were referred to a Full Bench which allowed the same by judgment dated 2.8.83. The acquisition proceedings were quashed. Aggrieved by the said judgment BAW Society obtained Special Leave and filed Civil Appeal Nos. 5784-85 of 1983. 5. In June, 1983 the Government cancelled the exemption granted under the Ceiling Act by GOMS No. 5964. The landowner and the Society filed writ petitions 5498 and 6500 of 1983. 6. The Civil Appeals filed by BAW Society came up for hearing on 7.8.85 and the following order was passed:

"Mr. P.P. Rao commenced his arguments at 12.45 P.M. and argued till 1.00 P.M. Thereafter Court asked Mr. Divan to raise preliminary objections and Shri Divan argued from 2.00 P.M. to 2.25 P.M. Thereafter Mr. P.P. Rao resumed his arguments.

After hearing him for a shortwhile the Court adjourned the matter to 16.8.85 in order to enable the parties to explore the possibility of a settlement on the basis that a part of the land sought to be acquired is released from acquisition and members of Bagh Amverpet Society may be able to build on a part of the land and owners may also keep some part of the land. We would request the concerned officer of the Municipal Corporation of Hyderabad to take initiative in this matter for bringing the parties at the negotiating table and help them so that on the above basis or on any other basis which may be acceptable to the parties so that settlement may be arrived at".

7. When the matters came up again on August 23, 1988 this court passed an order holding that the Acquisition proceedings were valid and the Writ Petitions filed by the landowner and the society challenging the same were rightly dismissed by the Civil Judge. This court held that the appellate judgment of the Full Bench of the High Court could not be sustained and the Acquisition proceedings had to be revived. In the same order, the court referred to the suggestions made on the earlier occasion on 7.8.1985 for effecting a settlement between the parties and set out the subsequent events in the following words:-

"Pursuant to the view expressed by the court, the two societies have filed terms of settlement, which are on record. The State Government of Andhra Pradesh which also has filed independent appeals against the same appellate judgment of the High Court has agreed to accept the terms of settlement and their counsel states that fact to us in Court. While other terms are acceptable, one of the terms regarding the valuation of the land to be determined by Government requires alteration. Learned counsel for the appellant too has agreed to offer at the rate of Rs.3 lacs per acre and that term is acceptable to the writ petitioners respondents as also the landowner. In view of the fact the parties have agreed to the said amount of Rs.3 lacs per acre as the value of the land, under acquisition, the terms in the settlement for fixation of the compensation shall be substituted by the offer made by Mr. Iyer for the appellant. All parties agree to these terms being altered by us. Mr. Iyer has further agreed that the entire amount of compensation for 9 acres and 1-1/2 gunthas, which under the terms of settlement would be available to the appellants shall be paid at the rate of Rs.3 lacs per acre (all

liabilities included) within three months hence. Failing payment of this amount within the time undertaken, interest at 15% payable on the amount shall be payable. This order shall not be effective until counsel for the State of Andhra Pradesh takes instructions and files a memorandum within a week from today that Government including the Urban Ceiling authorities accept this arrangement. After the State indicates its ratification, the matter shall be placed for further directions on 31st August, 1988 in the Chamber for further directions".

8. The matter was posted on 31.8.1988 and the Court passed the following order:-

"When we made the order on 23rd August, 1988, the letter of Secretary, Housing, Municipal Administration & Urban Development Deptt. Govt of Andhra Pradesh dated 15.2.88 was not placed before us. We find, that letter specifically refers to the proceedings before this Court and the terms of compromise and indicate Government's reaction and response thereto. Counsel for the parties suggest that we should modify our direction of August 23, 1988, taking the compromise terms on record and proceed to dispose of the dispute. Mr. TVSN Chari who has just appeared on behalf of Govt. of Andhra Pradesh says that he may be given one week's time to obtain instructions from the Govt. In these circumstances, we adjourn the appeals to 13th September, 1988 to be taken up in Chamber at 1.30 p.m. "

9. In the meanwhile, the Writ Petition filed by the land owner challenging the cancellation of exemption granted under the Ceiling Act was dismissed by the High Court on 30.6.1988. He filed S.L.P.(C) No. 1679 of 1989 in this Court. The other Writ Petition filed by the Society namely Writ Petition (C) No. 6500 of 1983 was withdrawn to this Court to be heard along with Civil Appeal Nos. 5784-85 of 1983 and S.L.P(C) No. 1679 of 1989. That was taken on file as Transfer Case No. 29 of 1989. All the matters were heard together and the final order was passed on 17.8.1990 after setting out the facts and extracting the relevant portions of the earlier order dated 7.8.1985, the court said:

"This Court, however, gave time to the counsel for the State of Andhra Pradesh to take instructions as to the application of the Urban Land Ceiling Act as exemption granted under Section 20 had been withdrawn in June, 1983. The State of Andhra Pradesh thereafter did not accept the compromise by taking the stand that proceedings under the Urban Land Ceiling Act were pending and in view of the fact that there was no exemption, the property was liable to vest in Government under the Act as surplus land".

Again after extracting a portion of the Order dated 23.8.1988 the Court said thus:

"This order virtually disposed of the appeals but as the parties were negotiating a settlement the Court did not record a formal disposal of the disputes. If the settlement does not fructify, the effect of our decision that the acquisition proceedings are to revive, would be that the claim to the land by Tulsi Cooperative Housing Society would come to an end. In that event, at the most that Society would only be entitled to such compensation as may be awardable in law. If the acquisition proceeds the Bagh Amverpet Welfare Society and the Municipal Corporation would have to work out their mutual rights. Apart from these, the two writ petitions challenging the withdrawal of the exemption by order dated 23.6.1983 would also have to be disposed of on the merits. The owner's application has been dismissed upon the High Court taking the view that the matter was before this Court and, therefore, the High Court would not entertain the dispute. The challenge by Tulsi Cooperative Housing Society against the said withdrawal was before the High Court for adjudication. In view of

the fact that the owner's writ petition was dismissed not on merits but on other considerations, we are of the view that the said dismissal should be vacated and that writ petition should be heard along with Writ Petition No. 6500/83 as a common question arises for determination. We, therefore, set aside the order of the High Court dated 13th of June, 1988, and direct that the said writ petition shall be disposed of afresh on merits.

We are of the view that the entire litigation should go back to the High Court for appropriate disposal. The transferred writ petition, therefore, shall also go back to the High Court and shall be dealt with as Writ Petition No. 6500 of 1983. The two petitions challenging the withdrawal of exemption shall be clubbed together and be heard. The proposals undertaken relating to a settlement in regard to the 18 acres and 3 gunthas of land may be considered by the High Court in the light of all relevant material and circumstances. If the High Court is of the opinion that the matter should be settled and the entire land of the owners amounting to 18 acres and 3 gunthas should be divided between the two Societies, it will be free to do so if Government also agrees thereto. Since that arrangement would be with the consent of the State Government it would in such an event be open to the High Court to nullify the acquisition. The observations which we have made at different stages during the pendency of the proceedings in this Court may not be taken to be expression of opinion on the merits and the High Court would be free to deal with the matter in its own discretion and in accordance with law.

In the event of the settlement not coming through the acquisition proceedings would continue under the law and be concluded by the Land Acquisition Officer in accordance with law. In the event of the acquisition working out, the two writ petitions against the withdrawal of exemption would not be sustainable as the land would vest in Government as a result of acquisition. It would be open to the Government of the acquiring authority to take into account the effect of the laws of urban ceiling.

The civil appeals are remitted to the High Court limited to the consideration of the proposals for settlement in the light of the observations hereinabove. Otherwise, they must be taken to have been concluded in this Court on our finding that acquisition proceedings are valid and shall be entitled to continue. The special leave petition of Azam is disposed of with a direction that the writ petition in the High Court shall be re-heard. The transferred writ petition is remitted to the High Court to be disposed of as Writ Petition No.6500 of 1983. The hearing of the writ petition would depend upon the fate of the settlement as indicated above".

10. After remand, the High Court by its judgment dated 21.11.1992 dismissed the two Writ Appeals under the Acquisition Act and disposed of the two writ petitions under the Ceiling Act with the following directions: "1) The Land Acquisition proceedings covered by the Sec. 4(1) notification issued in G.O.Rt. No. 68 dated 4.6.75 in respect of Ac.18-03 gunthas of land shall revive and be completed as expeditiously as possible preferably within three months from today, the beneficiaries being the 374 members of the Bagh Amverpet Welfare Association who have already remitted a total sum of Rs.40,20,649.04.

2) The compensation amount the land owners are entitled to shall be limited only to Rs.25,49,131.75 and nothing more.

3) M/s. Tulsi Co-operative Housing Society is at liberty to work out its rights vis-a-vis the land owners.

4) The applications filed under Sec.20 of the U.L.C.Act seeking exemptions from the operation of the Act and now pending with the Government since 1976 shall be disposed of as indicated supra".

11. Aggrieved by the said judgment, the Society has filed Civil Appeal Nos. 6986-87 of 1994. The Government has filed Civil Appeal Nos. 6988-91 of 1994 while the Land Owner has filed Civil Appeal NOs. 6992-93 of 1994. All the above appeals were heard together.

12. Mr. D.D.Thakur, the learned senior counsel for the Society contended that the High Court has failed to decide the crucial question arising in this case, though this Court remanded the matter for that purpose. According to him the facts and circumstances of the case proved a complete concluded tripartite compromise among the Society, the Government and BAW Society. He took us through some of the documents which came into existence after this Court passed the Order dated 7.8.85 and adjourned the matter for effecting a settlement. He also relied upon the memo of compromise and the petition filed in this Court by BAW Society for granting sanction to the compromise arrived at between the parties. It was contended that the records established that the Government had also agreed to the said compromise whereby the lands which were the subject-matter of the acquisition were to be divided into two halves, one to be taken by the Society and the other by the BAW Society. He argued that even if this Court holds that there was no express agreement on the part of the Government, the same could be inferred from the available records. Hence it should be held that there was a concluded compromise to which the Government was a party by implication. Learned counsel also invoked the doctrine of legitimate expectation and contended that the same should be applied in the present case and the Court should not allow the Government to go back upon the concluded agreement.

13. We are unable to accept any of the aforesaid contentions. The Order passed by this Court on 17.8.90 is itself sufficient to negative the above arguments. In fact, the said order precludes the Society from contending that there was a concluded compromise. If there was such a compromise it ought to have been pressed into service before this Court and if the same had been accepted, there would have been no necessity for a remand. On the other hand, the following observation in the Order of this Court shows clearly that there was no concluded compromise and this Court proceeded only on that footing: "If the High Court is of the opinion that the matter should be settled and the entire land of owners amounting to 18 acres and 3 gunthas should be divided between the two societies, it will be free to do so if Government also agrees thereto". The next sentence in the order of this Court reads as follows:- "Since that arrangement would be with the consent of the State Government it would in such an event be open to the High Court to nullify the acquisition".

14. The above two observations show that if a compromise was to be effected it was only to be brought into existence after the said order of this Court and only if the Government consented thereto. Admittedly, the Government did not express any consent after the said order of this Court and on the other hand, vehemently opposed the proposed settlement between the parties. The contention that there was a concluded compromise to which the Government was party is untenable in view of the aforesaid observations in the order of remand made by this Court on 17.8.90. We have no hesitation at all to hold that the view expressed by the High Court in this regard is correct and there was no necessity for the High Court to decide to the question whether there was a complete concluded compromise.

15. In view of the said position we consider it unnecessary to deal with the contention of learned

counsel based on the provisions of Order 23 Rule 3 C.P.C. and Rule 24 of the Andhra Pradesh High Court Rules. Nor is it necessary to refer to Section 13 of the Contract Act relied on by the learned counsel. There is also no warrant in this case to invoke the doctrine of legitimate expectation.

16. The learned counsel for the Society contended that in any event the sale in favour of the Society of an extent of 5 acres of land comprising lands other than the subject-matter of the acquisition proceedings was valid and should be upheld. That question is wholly extraneous to the present proceedings and does not arise for our consideration. In these proceedings we are concerned only with the validity of the acquisition proceedings and the validity of the order of the Government cancelling the exemption granted under the provisions of the Ceiling Act.

17. Learned counsel contended that the cancellation of exemption under the Ceiling Act was unsustainable and at any rate it was bad with reference to the extent of 5 acres of land which did not form part of the subject-matter of acquisition under the Acquisition Act. There is no merit in this contention. The High Court has considered in detail the question whether the cancellation of exemption under the Ceiling Act was valid or not. The High Court has found that there was ample justification for cancellation of the exemption. It has been found that the land-owner as well as the Society had violated the conditions subject to which exemption was granted. As the High Court has dealt with the matter at length and upheld the cancellation of exemption, it is unnecessary for us to repeat the reasoning of the High Court. We do not find any justification whatsoever to interfere with the conclusion of the High Court that the cancellation of exemption was valid and that the writ petitions filed by the land-owner and the Society were liable to be dismissed.

18. The next contention of learned counsel for the Society was that the land acquired under the Acquisition Act should be distributed equitably not merely among the members of BAW Society but also among the members of the appellant Society. He took exception to the direction contained in the judgment of the High Court that the beneficiaries of the proceedings were 374 members of the BAW Society who had already remitted a total amount of Rs.40,20,649.04. This particular contention urged by the learned counsel is also supported by learned counsel for the State Government which has filed Civil Appeal Nos.6988-91/94. In fact, learned Senior Counsel Mr. P.A. Chaudhary appearing for the Government raised a contention that the lands acquired should be utilised for public purposes other than those for which the lands were acquired. He argued that the lands should be kept as water tank and be utilised as such.

19. While we find justification in the contention put forward by the learned counsel for the Society that the High Court has exceeded its jurisdiction in giving a direction confining the benefit of the acquisition proceedings to the 374 members of the BAW Society, we are unable to accept the extreme contention urged by the learned senior advocate for the Government that the land should be permitted to be utilised for purposes other than those for which it was acquired. Once we uphold the validity of the proceedings for acquisition under the Acquisition Act, it has to follow that the lands have to be utilised for the purposes for which they were acquired. We would set aside Direction No.1 contained in the penultimate para of the judgment of the High Court and substitute it with a direction that the lands acquired under the Acquisition Act should be properly utilised by the Government in order to achieve the purpose for which they were acquired. The Government may nominate a suitable Committee comprising at least three Secretaries to the Government for the purpose of carrying out the objects of the acquisition in an appropriate manner.

20. Mr. Gopal Subramaniam, learned senior counsel for the land owner addressed his arguments

against Direction No.2 given by the High Court in the impugned judgment. By the said direction the High Court has held that the compensation amount to which the land owner is entitled shall be limited only to Rs.25,49,131.75 and nothing more. Learned counsel submitted that the validity of the acquisition proceedings having been upheld, the Court has no jurisdiction to fix the compensation ignoring the specific procedure prescribed in the Acquisition Act. It was also his contention that the High Court arrived at the figure arbitrarily on a wrong premise that there were some special equities in favour of the members of the BAW Society and the price of the land should be fixed at Rs.25 per sq. yd. It was pointed out by him that there was no material before the High Court for fixing the market value of the land on the date of the notification under Section 4(1) of the Acquisition Act and in any event, the parties had no opportunity to place the relevant evidence before the Court to enable it to fix the market value.

21. In our view, the contention is well founded and unanswerable. Once the proceedings under the Acquisition Act have been held to be valid, the prescribed procedure in the Act for fixing the compensation payable to the land owner should have been followed and the High Court could not usurp the functions of the hierarchy of authorities constituted under the Act. The two reasons given by the High Court for taking up the task of fixing the compensation upon itself are that the litigation should not be allowed to drag on any further and that there are special equities in favour of the members of the BAW Society. Neither reason is sustainable. The fact that the proceedings have been pending for long would not justify the Court to exceed its jurisdiction. The question whether there are special equities in favour of the members of the BAW Society and whether such equities would be relevant at the time of fixing the market value of the land under the provisions of the Acquisition Act are matters to be decided by the concerned authorities in accordance with the procedure prescribed in the Act. Hence the conclusion of the High Court fixing the compensation for the land at Rs.25,49,131.75 and the direction that the land owners are not entitled to anything more has to be upset.

22. Learned counsel also pointed out the facts and circumstances in the case which speak against the contentions urged by Mr. D.D. Thakur. It is unnecessary for us to refer to them as we have already dealt with the said contentions and found that they are not sustainable.

23. Mr. Gopal Subramaniam next contended that the High Court is wrong in holding that the Government can proceed under the provisions of the Ceiling Act as the latter are over-riding and will have effect notwithstanding any other provision of law. According to him once the land had vested in the Government under the provisions of the Acquisition Act, before vesting under the Ceiling Act could take place, there is no question of withdrawing the proceedings under the Acquisition Act and proceeding further under the provisions of the Ceiling Act. It was contended that the High Court has mis-understood the ruling of this Court in *Dattatraya Shankarhat Ambalgi and others versus State of Maharashtra and others* AIR 1989 Supreme Court 1796 and pointed out that in the said case, the land had vested in the Government under the Ceiling Act pursuant to the final statement under Section 9 of the said Act. It was submitted that in the present case such stage under the Ceiling Act had not reached. There is considerable force in this contention of the learned counsel. But it is unnecessary for us to pronounce on the said contention in view of the categorical statement made by the learned senior advocate for the Government that he has obtained written instructions from the Government that the compensation in the present case would be paid under the provisions of the Acquisition Act and the provisions of the Ceiling Act would not be invoked therefor.

24. As a matter of fact, the judgment of the High Court appears to be somewhat inconsistent in this respect. The High Court has upheld the cancellation of exemption under the Ceiling Act and dismissed the writ petitions filed by the land-owner and the Society. The High Court has also upheld the validity of the land acquisition proceedings and has gone to the extent of holding that the beneficiaries of the acquisition were 374 members of the BAW Society. The High Court has further held that the compensation amount payable to the land owners shall be limited to Rs.25,49,131.75. In that situation, there was no necessity for the High Court to express its opinion that the provisions of the Ceiling Act were not excluded by the acquisition proceedings and that they were over-riding. The conclusion of the High Court on that question is wholly unnecessary for the purpose of this case and we set aside the same. We make it clear that we do not express any opinion on the question of law in the present case in view of the statement made by the learned senior advocate for the Government and recorded as above.

25. The High Court has chosen to issue a direction which is Direction No.4 that the applications filed under Section 20 of the Ceiling Act seeking exemption from the operation of the Act and pending with the Government since 1976 shall be disposed of as indicated in the judgment. We do not understand how such a direction could be issued in the present case which is between the concerned parties. The direction relates obviously to parties who were not before the Court in the present case. It is for the Government to consider applications for exemption and dispose of the same in accordance with law.

26. We have already adverted to the contention put forward by learned senior counsel for the Government in C.A. Nos.6988-91/94 and said that it was not possible to accept the extreme contention. Learned counsel for the BAW Society urged that the proceedings for acquisition were exclusively for the benefit of the members of the said society and they had deposited the price of the land as demanded by the Municipal Corporation several years back. It was argued that the lands could not be given to any person other than the members of the said Society. Even in the order passed by this Court on 17.8.1990 remanding the matter to the High Court, it was made clear that if the acquisition proceeded, the BAW Society and the Municipal Corporation would work out their mutual rights. Hence, it is unnecessary for us to express any opinion on the claim made by the BAW Society. As observed already by us the Government shall take appropriate proceedings by appointing a suitable Committee to utilise the lands acquired appropriately for the purposes for which they were acquired.

27. In the result, the Civil Appeals are disposed of with the following directions: (I) The directions contained in the judgment of the High Court are set aside;

(II) The land acquisition proceedings covered by the Notification under Section 4(1) of the Acquisition Act issued in G.O.Rt. No.68 dated 4.6.75 in respect of 18 acres 03 guntas of land stand revived and shall be completed as expeditiously as possible within a period of three months from today; (III) The concerned authorities constituted under Acquisition Act shall decide the compensation payable to the land owner in accordance with the provisions of the Act.; (IV) The Government shall nominate a Committee comprising at least three Secretaries to the Government for distributing the acquired land equitably among deserving persons in order to carry out the purposes of the acquisition and to balance the equities between various persons whether they belong to one or the other society or are not members of either society.; (V) M/s. Tulsi Cooperative Housing Society is at liberty to work out its rights as against the land owner in appropriate proceedings; (VI) Applications under Section 20 of the Ceiling Act seeking exemption from the

operation of the Act said to be pending with the Government since 1976 shall be disposed of in accordance with law as expeditiously as possible and preferably within a period of three months from today.