SUPREME COURT OF INDIA

Raipur Development Authority

Vs.

Anupam Sahkari Griha Nirman Samiti

30.03.2000

(A.P.Misra and M.B.Shah JJ.)

JUDGMENT:

MISRA, J.

The appellant raises the question of interpretation of sub-sections (2) and (3) of Section 50 of the M.P. Town and Country Development Act, 1973, (for short the Act) read with Rule 18 of the M.P. Town and Country Development Rules, 1975 (for short the Rules).

This appeal is directed against the judgment and order dated 25.8.1988 of the High Court, which allowed the writ petition of the respondent no.1, by quashing the draft scheme for the development in respect of some of the villages including Shankar Nagar of Raipur, to which we are concerned, published under Section 50 (3) of the Act in M.P. Gazette dated 4.9.1987/11.9.1987 and by holding in his favour deemed permission under Section 30(5) of the Act to develop its land.

We now hereby give some of the bare factual matrix to appreciate the controversies in this appeal. The appellant is a statutory authority under the Act. The respondent no.1 is a Cooperative Housing Society registered under the M.P. Cooperative Housing Act, 1960. The aforesaid 1973 Act has been enacted to make provisions for planning, development and use of land for proper development, with a view to ensure that town planning schemes are made effectively under Chapter IV of the Act. The State Government through notification constitutes planning areas and defines its limit. Section 14 enjoins the Director to prepare a development plan. Such development plan is sanctioned by the State Government, which for the Raipur city was sanctioned on or before 9.9.1976. Chapter VI deals with control, development and use of land. Under Section 24, the overall control, development and use of land vests in the State Government subject to the rules framed under the Act. Section 25 enjoins, the use and development of the land must conform to the provisions of the sanctioned development plan, Section 26 prohibits development of any land without the permission in writing of the Director. Section 27 refers to the development undertaken by the Union or the State Government. Section 28 refers to the development undertaken by a local body or any authority constituted under the Act, while Section 29 refers to the development of the land by any other person. Section 30 empowers the Director to grant permission conditionally, unconditionally or refuse permission while sub-section (5) refers to a case, where the authority fails to communicate his order on ones application under Section 29 for development within 60 days of its making, then permission would be deemed to have been granted after expiring of the said period. Under Section 50(1), the Town and Country Development Authority may, at any time, declare its intention to prepare a town development scheme which may be published within thirty days thereafter under sub- section (2). Under sub-section (3) the draft scheme is to be published within two years of the

publication under sub-section (2), in the form and the manner as prescribed under Rule 18 and within 30 days of this publication, objections and suggestions could be filed before the concerned authority who has to consider and decide the same and make if any consequential modifications. From the date of the final publication of the scheme under sub-section (7), restrictions are imposed for the use and development of the land by virtue of Section 53, which has to be only in accordance with the development authorised by the Director under Section 54.

Respondents case in the writ petition before the High Court was that its society provides for its members, who belong to economically weaker section, plots for the construction of houses. It purchased 25 acres of agricultural land in Shankar Nagar, Circle No.1, in the year 1985-86. This was purchased, since the State Government through its policy decision dated 30.10.1981 decided to encourage housing societies to construct houses in towns of over two lacs of population. It stipulated, 25% of the available land was to be given to the housing societies for construction of houses and in case government lands falls short of this, it may acquire any land for the societies. On the other hand, according to respondent no.1, the appellant published its intention to prepare a development scheme under sub-section (2) of Section 50 through notification in the M.P. Gazette dated 30.3.1985 including the village Shankar Nagar, Raipur. Respondent no.1 during this period applied on 2.6.1986 to respondent no.2, the Regional Joint Director for permission to develop its land under Section 29 and stated that necessary fees shall be deposited, after permission is given. Respondent no.1 through another application applied for no objection certificate to respondent no.3 on 1.1.1987. On it an order dated 16.11.1987 was passed that no such certificate could be issued, as draft development scheme has already been published. With reference to the first application dated 2.6.1986, respondents case is, since respondent no.2 did not communicate any of his decision either granting or refusing the permission, hence after 60 days of the said application, it matured into deemed permission by virtue of sub- section (5) of Section 30. Next challenge to the draft scheme is that it was not published within two years from the date of publication under sub- section (2) of Section 30 viz., from 30.3.1985 in term of sub-section (3) of Section 50 hence the same is non est and inoperative. It is also submitted that Rule 18(2) requires publication of the draft scheme under sub-section (3) of Section 50, in the gazette and in one or more local paper which means publication in both, i.e., in the gazette and the newspaper has to be simultaneously within a period of two years and the publication in the newspaper was only made admittedly on 7.11.1987 which itself is more than two months from the date of publication under sub-section (3) of Section 50 in the gazette. Thus for all these reasons the draft scheme published is invalid and inoperative. Aggrieved by order dated 20.11.1987 passed by the Joint Director, town and country planning, refusing permission for development and order dated 1.11.1987 issued by Chief Executive Officer, Raipur Development Authority refusing to issue no objection certificate, the respondent No. 1 filed the aforesaid writ petition which is allowed by the impugned order by which the aforesaid draft scheme of the appellant in respect of village Shankar Nagar of Raipur was quashed. It also held that respondents application dated 2.6.1986, after expiry of 60 days, in the absence of any order qualified as deemed permission under sub-section (5) of Section 30 of the Act. Aggrieved by this the appellant have filed the present appeal.

The first contention raised for the appellant is, whether on the facts and circumstances of this case, in view of sub-section (5) of Section 30 of the Act, could it be said it to be a case of deemed permission. For the ready reference Section 30 is quoted hereunder:-

30. Grant or refusal of permission (1) On receipt of an application under Section 29 the Director may, subject to the provisions of this Act, by order in writing

(a) grant the permission unconditionally;

(b) grant the permission, subject to such conditions, as may be deemed necessary under the circumstances;

(c) refuse the permission.

(2) Every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(3) Any permission granted under sub-section (2) with or without conditions shall be in such manner as may be prescribed.

(4) Every order under sub-section (2) shall be communicated to the applicant in such manner as may be prescribed.

(5) If the Director does not communicate his decision whether to grant or refuse to the permission applicant within [sixty days] from the date of receipt of his application, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of [sixty days];

Provided that in computing the period of [sixty days] the period in between the date of requisitioning any further information or documents from the applicant and the date receipt of such information or documents form the applicant shall be excluded.

Under sub-section (5), if the Director does not communicate his decision either granting unconditionally or conditionally or refusing the permission then within 60 days from the date of the receipt of such application, the permission would be deemed to have been granted. But significantly proviso to it extends this period by excluding the period during which any further information or document is requisitioned from the applicant to the date of its receipt. It is not in dispute that respondent no.1 applied for the development of the land under Section 29 on 2.6.1986. The 60 days expires on 2.8.1986. The respondent case is till this date the Director has neither refused nor granted the permission hence it would be deemed to have been granted. On the other hand, appellant strongly relies on the five communications send by the Joint Director, town and country planning, to respondent no.1 seeking certain informations with regard to the development permission which was not forthcoming, for this reason, the case of the respondent was closed, which is evidenced from the letter dated 6.10.1986. Thus question of deemed permission would not arise in view of the said proviso. This letter refers to the said five earlier communications, namely, letters dated 18.6.1986, 1.7.1986, 21.7.1986, 31.7.1986 and 9.9.1986. The letter records:

Refer to the above letters with reference to the above subject. The information asked from you is still not received. Therefore the case is closed and filed.

Thus for full more than four months, since making of the said application the information was not forthcoming.

The contents of this letter clearly reveal that the case of the respondent no.1 was ordered to be

closed and filed. This letter reveals that period of sixty days has not come to an end, in view of the said proviso as information was not sent as asked for. So question of deemed permission would not arise. Then further it constitutes to be a case of rejection of its application. This letter was communicated to respondent no.1. He did not file any appeal or revision as contemplated under Sections 31 and 32 of the said Act. Thus we have no hesitation to hold that the High Court committed error in recording the finding that it is a case of deemed permission.

Next submission on behalf of the respondent is that the draft scheme was not published within two years from the date of publication of the declaration under sub-section (2) of Section 50. Submission is that declaration under sub-section (2) was published on 30.3.1985, hence the publication under sub-section (3) of Section 50 of the draft scheme made on 4.9.1987 is beyond the period of two years. On the other hand the case of the appellant is that publication under sub-section (2) was made on 6.9.1985 and since the draft scheme under sub-section (3) of Section 50 was published in the gazette on 4.9.1987 it is within the period of two years, hence no violation.

Section 50 and its sub-sections (1), (2) and (3) are quoted hereunder:-

50. Preparation of town development schemes. (1) The Town and Country Development Authority may, at any time, declare its intention to prepare a town development scheme.

(2) Not later than thirty days from the date of such declaration of intention to make a scheme, the Town and Country Development Authority shall publish the declaration in the Gazette and in such other manner as may be prescribed.

(3) Not later than two years from the date of publication of the declaration under sub-section (2) the Town and Country Development Authority shall prepare a town development scheme in draft form and publish it in such form and manner as may be prescribed together with a notice inviting objections and suggestions from any person with respect to the said draft development scheme before such date as may be specified therein, such date being not earlier than thirty days from the date of publication of such notice.

It is not disputed that there are two publications under sub-section (2) in the M.P. Gazette, one is dated 30.3.1985 and the other is dated 6.9.1985. Both the aforesaid gazette publications record intent of the appellant to prepare town development scheme under sub-section (2) of Section 50. It is not revealed from the records as to why two such publications were made for the same purpose on two different dates. Still on these facts question that arises for our consideration is, as to what would be the starting point for computing the period of two years. In our considered opinion, it would not have any ill consequential effect on the appellants, on account of two such publication. Any intention even if published under sub- section (2) of Section 50 if it is made to lapse, not proceeded with for any reason and for some reasons another such publication is made, in the absence of any embargo under the Act or Rules to which we have not been pointed, it would not invalidate this second such publication. In other words, even if after publication of the first intention, either it is given a go-by or otherwise on rethinking, if another such intention is published it would be a valid notice when it is published under sub-section (2). If that be so, the period of limitation would start from the later such publication. In the present case it would be 6.9.1985. If appellants were persuing its draft scheme only in pursuance to the publication made on 30.3.1985, the question of limitation would have gained relevant and valid consideration but when it published another such intend subsequently, the period has to be from this later publication. Admittedly the publication under sub-

section (3) of Section 50 was made on 4.9.1987 which is within period of two years from the date of the publication dated 6.9.1985 under sub-section (2). Thus the draft scheme cannot be held to be invalid on this score.

Next it is submitted that period of two years as required by Section 50 sub-section (3) is a period between the date of publication under sub-section (2) and the date of publication under sub-section (3) and it has to be in such form and manner as prescribed under the rules. Rule 18(2) prescribe the form which requires publication in the M.P. Gazette and one or more local Hindi newspaper. Thus publication would be complete only when publication both in the gazette and newspaper is made and since the publication in the newspaper was made more than two months after the date of publication in the gazette as aforesaid, not being published within two years, it is contrary to the requirement of the rules. It could be valid only, if both the publications in the gazette and local newspaper are made simultaneously. The High Court upheld this contention and held draft scheme to be invalid on this score. We have considered the finding of the High Court and the submission of learned counsel for the respondent. To appreciate this Rule 18 (1) and (2) is quoted hereunder:-

Rule 18.- Preparation of Town Development Schemes. (1) The Town and Country Development Authority shall publish a notice under sub-section (2) of Section 50 inn Form XIII declaring the intention of making a town development scheme in the Gazette and by means of an advertisement in one or more local Hindi newspaper. Copies thereof shall also be available for inspection in the office of the Town and Country Development Authority and Regional Offices of Town and Country Planning Department concerned.

(2) Not later than two years from the date of publication of the declaration in the form of the notice referred to in sub-rule (1) the Town and Country Development Authority shall publish a public notice under sub-section (3) of Section 50 in Form XIV in the Madhya Pradesh Rajpatra and in one or more local Hindi newspaper to give due publicity intimating that the draft town development scheme has been prepared and is available for inspection in the Office of the Town & Country Development Authority and regional office of Town and Country Planning Department concerned during office hours inviting objections and suggestions with respect to the said draft within a period of thirty days from the date of publication of such notice.

Rule 18 prescribes the form and manner of such publication. Sub-rule (1) refers to the publication of notice under sub-section (2) of Section 50 to be in Form XIII of the intention of making a town development scheme. Sub- rule (2) refers to the publication of notice of draft scheme contemplated under sub-section (3) of Section 50 to be in Form XIV. This further records, it should be published in the Madhya Pradesh Gazette and in one or more local Hindi newspaper to give due publicity that the draft town development scheme has been prepared and is available for inspection in the office of the Town and Country Development Authority, inviting objections and suggestions with respect to the said draft. If we read in coherence both Section 50 sub-section (3) and sub-section (2) with Rule 18, the limitation of two years starts from the date of the publication under sub-section (2) of Section 50 in Form XIII and ends with the publication of draft scheme under sub-section (3) of Section 50 in Form XIV, when it is published in Madhya Pradesh Gazette. The publication in one or more local Hindi newspaper as stated in sub-rule (2) of Rule 18 is to give due publicity to the public at large so that they may file their objections to the draft scheme. Though publication in Gazette is also notice to the public at large it is always open for the legislature, as in the present case, to give extra publicity to the public through the publication in any local daily. In fact, Rule 2 with respect to the publication in the Hindi newspaper records:

and in one or more local Hindi newspaper to give due publicity intimating that the draft town development scheme has been prepared and is available for inspection.. {Emphasis supplied}

However, for computing the period of two years, the moment it is published in the official gazette it is to be taken to be the date of publication under sub-section (3) of Section 50. As we have said, further publication in one or more local Hindi newspaper is required only for giving due publicity, for making larger section of people aware of such a scheme.

Sub-rule (2) of Rule 18 requires:

Not later than two years from the date of publication of the declaration in the form of the notice referred to in sub-rule (1) the Town and Country Development Authority shall publish a public notice under sub-section (3) of Section 50 in Form XIV in the Madhya Pradesh Rajpatra (Madhya Pradesh Govt. Gazette)..

Thus, when the publication in form XIV in the Madhya Pradesh Gazette is made, the compliance of the form and procedure of this Rule is complete. So if this publication is made within two years of the publication under sub-section (2) of Section 50, no invalidity could be attributable to any scheme under it. In view of this, it is not necessary to go into another question, whether this compliance is mandatory or directory. The submission that for computing period of two years the compliance of publication would only be completed if it is also published simultaneously in the local newspaper has no merit. There are two parts of sub-rule (2) of Rule 18. The first part we have quoted above and the second part which is disjoint with the word and is for another purpose, which is quoted hereunder: ..and in one or more local Hindi newspaper to give due publicity intimating that the draft Town and Country Development Scheme has been prepared and is available for inspection.inviting objections and suggestions.within a period of thirty days of the publication of such notice.

The later part of this rule confers a right on persons to file objection or give suggestion to the published draft scheme. So for counting the period of thirty days, it is the date when the draft scheme is published in the newspaper is to be taken as the date of the starting point.

Whenever there are two possible interpretations, the one which subserve to the intend of the legislature is to be accepted. The object of the aforesaid Act is for planned development and thus the interpretation, which upholds any such scheme should be followed. Heydons principle is now well recognised in interpreting any enactment. It lays down that courts must see, (a) what was the law before making of the Act; (b) what was the mischief or defect for which the law did not provide; (c) what is the remedy that the Act has provided; (d) what is the reason of the remedy. It states that courts must adopt that construction which suppresses the mischief and advances the remedy. This has been approved by this count in number of decisions. One of them is K.P. Varghese Vs. Income-tax Officer, Ernakulam and Anr., 1981 (4) SCC 173.

The remedy that aforesaid Act has provided is for smooth and fast development of the areas brought under the Act through development schemes. We find the interpretation given by the High Court which not only impedes advancement of this remedy but is contrary to the provisions of this Act. So, we have no hesitation to hold that the High Court committed an error in holding that publication in the M.P. Gazette and local newspaper must be simultaneously.

For all the aforesaid reasons we have no hesitation to hold, simultaneous publication both in the gazette and any local Hindi newspaper even if not made would not invalidate the draft scheme.

Next submission is publication under sub-section (2) of Section 50 has to be within 30 days from the date of declaration of the intention to prepare a development scheme under sub-section (1). In other words, submission is unless publication under sub-section (2) is made within 30 days from the date of declaration under sub-section (1), the draft scheme must fall as this has not been done. Firstly, we do not find any such material on record as to when declaration of intention to make such draft scheme was made nor we find any such submission made by respondent no.1 before the High Court in the writ petition. Thus it has no merit and hence rejected.

Lastly it is submitted that respondent no.1 application dated 1.1.1987 to the Chief Executive Officer of the appellant for the grant of no objection certificate was rejected on 16.11.1987 by him and also by the Joint Director, Town and Country Planning through order dated 20.11.1987 are liable to be set aside, as there is no provision under the Act or the Rules, requiring such no objection certificate. This is misconceived which we shall be referring hereinafter. It seems respondent no.1 made two applications for the development. First is on 2.6.1986 and the second is, as aforesaid, dated 1.1.1987.

So far the 1st application dated 2.6.1986, we have already recorded that there is no deemed permission under sub-section (5) of Section 30. In fact, proceeding in pursuance to the same was closed for the lack of response from the respondent in respect of information sought. The second application is dated 1.1.1987 in which the respondent-society states about purchasing certain lands in villages and this society itself seeks issuance of no objection certificate from the appellant. However, the Chief Executive Officer rejected this through an order dated 16.11.1987 as the land in question which is situate in, the village Shankar Nagar, in which a draft scheme, as aforesaid, has already been published. Admittedly when a draft scheme is published a sanction could only be in terms of the said scheme and no independent development plan in contradiction of the same could be sanctioned. Similarly, through letter/order dated 20.11.1987 the Joint Director, Town and Country Planning also did not approve the application of respondent no.1 as applied area comes under the residential scheme of Raipur Development Authority which has already been published in the gazette. We do not find any illegality in the said two orders. This apart, respondent no.1, if aggrieved, had a remedy either by preferring an appeal or revision against it under Section 31 or 32 of the Act. Even otherwise, we feel if any development scheme is published either by the Union Government, State Government or local authority any application by any person under Section 29 for development cannot have its way in contradiction to such scheme. The scheme was framed in the year 1985, because of this long litigation delay is being caused in implementing the same with full force. The courts should normally refrain from interfering with the same, unless it is violative of the Act, rule or any constitutional provisions.

For all the aforesaid reasons, we find merit in this appeal and hold that the High Court committed error in quashing the draft scheme and allowing the application of respondent no.1. Thus we allow the present appeal and set aside the judgment and order dated 25.8.1988 passed by the High Court. Costs on the parties.