SUPREME COURT OF INDIA

Fulchand Bhagwandas Gugale

Vs.

State of Maharashtra

C.A.No.6142 of 2002

(Shivraj V.Patil and B.N.Srikrishna JJ.)

25.11.2004

JUDGMENT

B.N.Srikrishna, J.

1. These two appeals by special leave arise out of different judgments of High Court of Judicature at Bombay, Aurangabad Bench, but are factually interconnected. It would, therefore, be convenient to dispose them of by a common judgment.

Facts in Civil Appeal No. 6142 of 2002:

2. Appellants are two brothers and sons of one Bhagchand Navalmal Gugale. The father of the appellants was the owner of agricultural land in Survey No. 2 of Pathardi village, Distt. Ahmednagar. The father of the appellants sold 14 acres of land from Survey No. 2 to Respondent No. 4, Agricultural Produce Market Committee (A.P.M.C.) by a registered sale deed dated 11.4.1960. Consequent to this sale, Survey No. 2 was divided into parts, i.e., Survey No. 2/1 and Survey No. 2/2. The portion of the land sold to the Fourth respondent-Committee came to be marked as Survey No. 2/2 and the land which remained with the appellants came to be marked as Survey No. 2/1.

3. The Director, Agricultural Produce Marketing, Pune addressed a letter dated 17.5.1980 to the Fourth respondent-Committee informing them inter alia that in order to the eligible for Central Government's financial assistance, the Fourth respondent should acquire 15 acres of land. Perhaps, in order to fulfill this condition, the Fourth respondent submitted a proposal to the Collector, Ahmednagar for acquisition of the required land for its acquisition. The proposal was processed and accordingly a notification under Section 4 of the *Land Acquisition Act, 1894* (hereinafter called 'the Act') was published in the Official Gazette of 24.6.1982. The appellants filed their objections to the preliminary notification under Section 4 of the Act, raising a number of objections and inter alia alleging malafides on the part of the Fourth respondent in seeking to acquire for the reason of enriching themselves under the guise of a public purpose. The Third respondent, Sub Divisional Officer, held an inquiry under Section 5A of the Act and made an order on 24.6.1983 holding that the demand for

additional land made by the Fourth respondent-Committee was not genuine and, therefore, the notification published under Section 4 of the Act should be cancelled. Accordingly, on 24.6.1983, the Third respondent-S.D.O. passed an order canceling the Notification dated 24.6.1982 and this order was published in the Official Gazette on 11.10.1983.

4. Being aggrieved by the order of the Sub Divisional Officer, the Fourth respondent-Committee approached the Additional Collector (Appeals), Ahmednagar, impugning the order of the Sub Divisional Officer. This appeal came to be dismissed by an order dated June, 1983 made by the Additional Collector (Appeals). A further appeal was made by the Fourth respondent-Committee to the Additional Commissioner at Nasik, who is Second respondent before us. The Second respondent purported to entertain the appeal despite a preliminary objection raised by the appellants. While this appeal was pending before the Additional Commissioner, the Fourth respondent-Committee approached the High Court by its Writ Petition No. 1046/84 challenging the Second respondent in entertaining the appeal. This writ petition came to be dismissed by an order dated 9.3.1984 by observing:

> "The Commissioner is seized of the matter and under Section 6 of the Act final decision is to be taken by the Commissioner. Hence, the writ petition is premature. Hence, rejected."

5. The Second respondent-Additional Commissioner, finally by his order dated 14.2.1985 allowed the appeal filed by the Fourth respondent-Committee and set aside the order of the Additional Collector and Sub Divisional Officer. He restored the notification under Section 4(1) of the Act and directed the Deputy Collector to submit a proposal for a final declaration under Section 6 of the Act.

6. Accordingly, a declaration came to be made under Section 6 of the Act on 27.6.1985. The appellants challenged the order of the Additional Commissioner by their Writ Petition No. 2816 of 1985 before the High Court. The writ petition was dismissed by the impugned judgment of the High Court made on 5.7.2001.

Facts in Civil Appeal No. 6143 of 2002:

7. On 3.12.1979, the appellants had applied to the Tahsildar of the concerned area for permission to convert the balance of 75 ares of land for non-agricultural use to enable them to build houses for their family members. The First respondent, Agricultural Produce Market Committee, objected to the grant of non-agricultural permission on several grounds. By an order dated 22.10.1981, the Tahsildar Pathardi granted N.A. permission to the appellants as prayed for. The First respondent-Committee challenged, the order of the Tahsildar with the Sub Divisional Officer, Rahuri Division, Ahmednagar. The Sub Divisional Officer, by his judgment and order dated 17.5.1982 dismissed the said appeal. Another R.T.S. appeal No. 31/82 was filed before the Additional Collector (Appeals), Ahmednagar. This too came to be dismissed by the order of the Additional Collector (Appeals) dated 5.8.1983. The First respondent-Committee filed a revision petition under Section 257 of the Maharashtra Land Revenue Code being Revision Application No. 375 of 1983 before the Additional

Commissioner, Nasik Road. By an Order dated 3.9.1986 the Additional Commissioner rejected the said revision petition. Aggrieved thereby, the First respondent-Committee filed Writ Petition No. 6095 of 1986 before the Bombay High Court, which was transferred to the Aurangabad Bench of Bombay High Court in 1989 and re-numbered as Writ Petition No. 3433 of 1989. This Writ petition was allowed with the observations:

> "For the reasons, stated in our judgment in Writ Petition No. 2768/92, this petition is allowed and Rule made absolute in terms of prayer clause (B). No costs."

8. Being aggrieved, the respondents are before this Court in appeal.

Civil Appeal No. 6142 of 2002:

9. Learned counsel for the appellants contends that the High Court erred in allowing the writ petition of the Agricultural Produce Market Committee. He contends that the order of the Additional Commissioner dated 14.2.1985 is clearly without jurisdiction. He further contends that under the provisions of the Act, the Additional Commissioner has no power of appeal as he has purported to exercise. Even assuming that the Sub Divisional Officer's order dated 24.6.1983, canceling the notification under Section 4 of the Act, was illegal and unlawful, it could not have been set aside by the Additional Commissioner purporting to exercising power which he did not possess under the Act.

10. Mr. Dhabe, learned counsel for the First respondent, State of Maharashtra and Mr. Lalit, learned counsel for the Fourth respondent, A.P.M.C. attempted to support the impugned judgment of the High Court. Mr. Dhabe fairly conceded that, under the provisions of the Act there was no such appellate or revisional jurisdiction vested in the Commissioner or Additional Commissioner against a report or order made under Section 5A of the Act by the Sub Divisional Officer. He further contends that Sub Divisional Officer or Land Acquisition Officer exercises the power of a Collector under Section 5A of the Act. That the expression 'Collector' is defined in Section 3(c) of the Act to mean, "the collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Appropriate Government to perform the functions of a Collector under this Act.". The Collector is a 'Revenue Officer', within the meaning of the Maharashtra Land Revenue Code, 1966; that under Section 247 of the Code the Collector's order was appeal able to the Divisional Commissioner and further, under Section 257 such order was revisable at the instance of the State Government or the Divisional Commissioner.

11. We notice that the order passed by the Sub Divisional Officer on 24.6.1983, canceling the Section 4 Notification, was wholly incorrect and beyond his jurisdiction. The only power of the Sub Divisional Officer exercising the powers of the Land Acquisition Officer under Section 5A of the Act is as contemplated under the section, to make a report after hearing the objections of the persons interested in the land which was proposed to be acquired. There is no manner of doubt that the officer hearing of the objections under Section 5A of the Act has no adjudicatory powers with regard to the legality or otherwise of a preliminary notification made under Section 4 of the Act. But, even accepting this position, it is difficult to agree with

the contention of Mr. Dhabe that the order of the Sub Divisional Officer, purportedly made under Section 5A of the Act, was appealable under Section 247 of the Maharashtra Land Revenue Code, 1966 to the Commissioner, or that, it was revisable under Section 257 of the Code. It may be true that, both the Sub Divisional Officer or Collector and the Commissioner are Revenue Officers are defined in Section 2(31) of the Maharashtra Land Revenue Code, 1966. But, when they act under the provisions of the Act, they are not acting as Revenue Officers under the *Maharashtra Land Revenue Code, 1966*, but as designated authorities under the Act. When they function under the provisions of the Act, their powers are determined by the provisions of the At and not by the provisions of the Maharashtra Land Revenue Code. It is not possible to accept the contention of Mr. Dhabe that the report made under Section 5A of the Act by the Sub Divisional Officer was done in his capacity as a Revenue Officer so as to be amenable to the appellate jurisdiction of the Commissioner under Section 247 of the Maharashtra Land Revenue Code. This contention must, therefore, fail.

12. The learned counsel then contended that the order made by the Sub Divisional Officer may be treated as honest and could be ignored. In our view, this position also would be inaccurate. At the highest, it could be possible to treat the order made by the Sub Divisional Officer as a report under Section 5A of the Act, recommending the acceptance of the objections raised by the petitioners to the proposed acquisition of their land. In this view of the matter, the Commissioner or the State Government could have exercised powers under Section 5A, and taken a decision on the objections as contemplated by sub-section (2) thereof. It is also not possible to accept the contention that the order of the Sub Divisional Officer was non est because based on the said order, the notification under Section 4(1) of the Act itself was cancelled. Once this was done, we see no power in the Commissioner under Section 6 or any other provision of the Act to make a declaration contemplated by Section 6 of the Act, unless the order canceling the notification issued under Section 4(1) was set aside by a procedure known to law. What the Commissioner has done is wholly impermissible under the provisions of the Act. We are also not in a position to accept the contention urged by the learned counsel that the Commissioner's order is one disagreeing with the objections, for at that point of time, the preliminary notification under Section 4(1) of the Act itself had been cancelled and, therefore, there was no ground for the Commissioner to proceed ahead.

13. Mr. Dhabe relied on the judgment of this Court in Mohd. Swalleh and others vs. Third Addl. District Judge, Meerut and Anr. and contended that even if the order of the Commissioner was illegal, there was no need to interfere with it because it had set right a wrong. We are afraid that it is not possible to accede to this argument for the simple reason that in Mohd. Swalleh (supra), this Court was considering the correctness of the exercise of discretionary jurisdiction by the High Court under Article 226 of the the Constitution. Unquestionably, the Commissioner is not vested with any such jurisdiction. Nor can the two be equated.

14. Reliance by Mr. Dhabe on Section 54 of the Act is also futile as this section delineates the appellate power of the High Court. Mr. Dhabe finally urged that if this Court were to

hold that the declaration under Section 6 of the Act to be illegal and set it aside, immense prejudice would be caused to the Fourth respondent, as in view of the law laid down by this Court in Padma Sundara Rao (dead) and others vs. State of T.N. and others the prescription of time limit in Section 6 is peremptory in nature and there is no scope for stretching the period further to have the time period run from the date of this Court's order. Hence, he contended that we should uphold the declaration made by the Commissioner under Section 6 of the Act.

15. In our view, the submissions made on behalf of the respondent cannot be accepted. The High Court seems to have completely erred in no noticing that the Commissioner purported to exercise a power which he did not possess under the Act. Therefore, it is not possible to uphold the order made by the Additional Commissioner as sustainable under any provision of the Act. We are not deterred by the consequences contemplated by the learned counsel for the Fourth respondent on the basis of the observations made by the Constitution Bench of this Court in Padma Sundara (supra). I such as the consequences, they shall necessarily follows.

16. In the result, we allow this appeal and set aside the judgment of the High Court. We also set aside the order of the Additional Commissioner Nasik, dated 14.2.1985 as well as the declaration under Section 6 of the Act. The consequence would be that the order of the Sub Divisional Office dated 24.6.1983 would stand until it is set aside by Respondent Nos. 1 to 3 in accordance with law. It shall be open to Respondents Nos. 1 to 3 to take such action as permissible in law and to issue further orders under the provisions of the Act as may be warranted.

17. The appeal is accordingly allowed with no order as to costs.

18. Though, Mr. Naik, learned counsel appearing for the appellants drew our attention to the observations of the High Court in Paragraphs 7 and 9 of the impugned judgment to the effect that the land in question was subject to a reservation under the development plan and, therefore, the consequences under Section 126 of the Maharashtra Regional and Town Planning Act, 1966 would come into play, we leave this question open for the parties to agitate, if and when it become necessary, in view of the our judgment as above.

Civil Appeal No. 6143 of 2002:

19. The High Court allowed the writ petition of the First respondent, Agricultural Produce Market Committee only for the reasons stated in its judgment in Writ Petition No. 2768 of 1992. By our judgment delivered in Civil Appeal No. 6142 of 2002, we have set aside the judgment of the High Court in Writ Petition No. 2768 of 1992. Even otherwise, we are satisfied that there was no ground, whatsoever, for the High Court to interfere with the order passed by the revenue authority. Tahsildar, for conversion of 75 areas of land for non-agricultural use, which order was upheld by the Sub Divisional Officer, Additional Collector (Appeals) and the Additional Commissioner, Nasik.

20. In the result, we allow this appeal and set aside the impugned judgment of the High Court.

21. No order as to costs.

SpotLaw