SUPREME COURT OF INDIA

Ganpatibai and Another

Vs

State of Madhya Pradesh and Others

Appeal (Civil) 3609 of 2006 (Arising Out of S.L.P. (C) No. 6509 of 2002)

(Arijit Pasayat and L. S. Panta, JJ)

23.08.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the legality of judgment rendered by a Division Bench of the M.P. High Court, Jabalpur dismissing appellants Letters Patent Appeal by order dated 7.11.2001. By the said order, the Division Bench dismissed the Letters Patent Appeal directed against order of learned Single Judge dated 23.8.2001 dismissing writ petition filed by the appellant.

Appellant had challenged notification issued under Section 4 and declaration under Section 6 of the Land Acquisition Act, 1894 (in short the 'Act') and the subsequent award passed by the Land Acquisition Officer. The writ application was dismissed primarily on the ground of delay and also on the ground that the award had already been passed. The Division Bench concurred with the view expressed by Learned Single Judge.

Learned counsel for the appellants submitted that the High Court should not have considered the writ petition to be belated. In fact, a suit was filed in the year 1990 immediately after notification was issued under Section 4 and declaration under Section 6 of the Act on 16.9.1987 and 6.12.1988

respectively. The suit was held to be not maintainable by learned Civil Judge, Indore on 16.3.2001. Thereafter, the writ petition was filed.

In response, learned counsel for the respondent- State of M.P. and its functionaries and the Indore Development Authority (in short the 'Authority') supported the order of learned Single Judge and the appellate judgment.

A few dates need to be noted for dealing with the rival contentions. The Authority passed a resolution on 13.3.1981 to frame scheme under Section 50(1) of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (in short the 'Adhiniyam'). The scheme was finally published in terms of Section 50(7) of the Adhiniyam on 1.5.1984. Certain additional lands were included in the scheme on 22.6.1984. Notification under Section 4 of the Act was issued on 16.9.1987, while the declaration under Section 6 of the Act was issued on 6.12.1988. The civil suit was filed on 6.9.1990 challenging the scheme, the notification and the declaration.

Written statement was filed stating that the suit was not maintainable. Certain landowners whose lands were acquired challenged the notification under Sections 4 and declaration under Section 6 of the Act and subsequent award passed. The High Court quashed the proceedings and the award; but clarified that the said order would be applicable only to those who had approached the High Court and not to others. By order dated 16.3.2001 learned Single Judge accepted the primary objections raised regarding maintainability and jurisdiction of Civil Court and held that the suit was not maintainable. On 20.7.2001 the writ petition was filed for quashing the notification, declaration, scheme as also the award which had been published on 08.06.2001. Learned Single Judge dismissed the writ petition holding that there was gross delay in approaching the Court. As noted above in the Letters Patent Appeal filed before the High Court, view of learned Single Judge was maintained.

It is not in dispute that right from the beginning the State Government and the Authority were taking the stand that the suit was not maintainable.

In State of Bihar v. Dhirendra Kumar and Ors. 0 (relied on), this Court had observed that Civil Suit was not maintainable and the remedy to question notification under Sections 4 and declaration under Section 6 of the Act was by filing a writ petition. Even thereafter the appellant, as noted above, pursued the suit in the Civil Court. The stand that five years after the filing of the suit, the decision was rendered does not in any way help the appellant. Even after the decision of this Court, the appellant continued to prosecute the suit till 2001, when the decision of this Court in 1995 had held that suit was not maintainable.

That being so, the learned Single Judge and the Division Bench were justified in holding that the writ petition was highly belated.

We find no infirmity in the order of the learned Single Judge as affirmed by the Division Bench to warrant interference.

The appeal is dismissed without any order as to costs.