SUPREME COURT OF INDIA

(1) Uttar Pradesh State Industrial Development Corporation; (2) Rishabh Ispat Limited; (3) Bikhu Ram Jain and Others; (4) Sharda Jain

Vs

(1) Rishabh Ispat Limited and Others; (2) Pitalu and Others; (3) State of Uttar Pradesh; (4) Tikkam Singh and Others

Appeal (Civil) 1330 of 1997; Civil Appeal Nos. 1332 - 1382 of 1997; Civil Appeal No. 1383 of 1997; Civil Appeal Nos. 1384 - 1515 of 1997; Civil Appeal Nos. 1516 - 1535 of 1997; Civil Appeal No. 1331 of 1997

(B. P. Singh and Altamas Kabir, JJ)

15.12.2006

JUDGMENT

B. P. SINGH, J.

This batch of appeals has been preferred against the common judgment and order of the High Court of Judicature at Allahabad dated April 2, 1996 whereby a large number of appeals preferred by the U.P. State Industrial Development Corporation (UPSIDC) as well as the claimants have been decided.

The lands acquired under the provisions of the Land Acquisition Act, 1894 measuring about 900 acres under three Notifications are located in two adjacent villages, namely Village Habibpur and village Gulsitapur. In respect of Habibpur a Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 25th August, 1981 in respect of 225.75 acres of land. Another Notification under Section 4 was issued on 14th September, 1981 which related to 173.5 acres of land in village Gulsitapur. The third notification was issued on May 30, 1985 which related to 501.48 acres of land of village Gulsitapur.

Civil Appeals Nos. 1330 of 1997, 1332 to 1382 of 1997 have been preferred by UPSIDC and relate to village Habibpur. Similarly Civil Appeal Nos. 1384 to 1515 of 1997 have been preferred by the UPSIDC. The remaining appeals are by the land- owners/claimants. Pursuant to the Notification issued under Section 4 of the Land Acquisition Act, 1894 on 25th August, 1981 the lands in village Habibpur were sought to be acquired for a public purpose. The possession of the lands in question was taken on 25th September, 1981. The Special Land Acquisition Officer offered compensation to the land owners on the basis of circle rates of the lands in question and accordingly for the lands of which the circle rate was Rs.3.05 ps. the compensation was fixed @ Rs.6, 486.49 ps. per bigha. Similarly the lands which had the circle rate of Rs.6.25 per sq. yard, the compensation offered was Rs.11, 583.02 ps. The land- owners were not satisfied with the offer of the Special Land Acquisition Office, hence a reference was sought and made under Section 18 of the Act. The reference court enhanced the compensation offered by the Special Land Acquisition Officer and it allowed compensation @ Rs.11/- per sq. yard for the lands abutting the road and a compensation of Rs.6/- per sq. yards for the other lands. The High Court on appeal by its impugned judgment and order has maintained the compensation awarded in respect of the lands abutting the road @ Rs.11/- per sq. yard and enhanced the compensation in respect of other lands from Rs.6/- to Rs.9/- per sq. yard. It cannot be disputed that the lands in question are valuable lands and have become even more valuable on account of the development that has taken place in the area. The lands are in the vicinity of the city of Delhi and within 8-9 kilometers of Noida on Dadri Noida Delhi main road. It is not in dispute that villages Habibpur and Gulsitapur are adjacent villages. Having regard to the location of these villages compensation for lands acquired have been awarded on the same basis and at the same rates by the High Court.

The High Court has undertaken a very detailed and meticulous examination of the evidence on record to determine the compensation payable to the land-owners. It is well settled that having regard to the principles laid down in the Act the Court must determine the compensation payable to the land-owners, but all said and done as assessment of compensation to be awarded does involve some rational guess work, having regard to all the facts and circumstances of the case.

We have carefully perused the judgment of the High Court and so far the quantum of compensation is concerned, we have not found any illegality or irrationality in the reasoning of the High Court. On a very careful consideration of the evidence on record, the High Court has recorded its finding and we, therefore, do not find any reason to interfere with the order of the High Court.

We may however notice that counsel appearing on behalf of the appellant UPSIDC submitted that in the instant case there was a sale deed wherein land was purchased by Shri A.P. Sarin @ 0.72 ps. per sq. yard. He, therefore, submitted that there could be no better evidence to prove that the value of the land was much less, particularly when the aforesaid sale deed was executed only 4 days before the issuance of the Notification under Section 4 of the Act. The submission appears to be attractive, but having regard to the fact that the Land Acquisition Collector himself offered compensation @ Rs.3.92 ps. and Rs.2.14 per sq. yard, the compensation could not have been reduced to 0.72 ps. per sq. yard in view of the provision of Section 25 of the Act. Moreover the sale deed does not appear to correctly represent the value of land in that locality because the other exemplars gave a different picture. On the other hand, the claimants had also produced a sale deed dated 19th August, 1981 which related to the sale of 0.5 bigha of land in village Habibpur @ Rs.43, 801/- per bigha. This exemplar was rejected by the Reference Court observing that there was only one such sale deed

which disclosed such high value for the lands of village Habibpur. The Reference Court relied upon a sale deed executed on 25th July, 1981 which related to the sale of 2 bighas of land of village Habibpur @ Rs.21, 600/- per bigha. This sale deed was executed on 25th July, 1981 whereas the Notification under Section 4 was issued on 25th August, 1981. The Reference Court found this exemplar to be a reliable piece of evidence and accordingly determined compensation @ Rs.11/- per sq. yard for the lands abutting the road and Rs.6/- for the lands away from the road. The High Court has affirmed the finding of the Reference Court. We find no reason to interfere with the finding which is based on proper appreciation of the evidence on record and the proper application of the principles relating to determination of compensation under the Act. Mr. Reddy then submitted that the claimants having accepted the compensation offered to them without demur or protest, they were not entitled to claim a reference under Section 18 of the Act. On the other hand learned counsel for the claimants contended that this submission was not founded on correct factual basis since the claimants had filed their objections within time and, therefore, there was no question of their accepting the compensation without protest. The question as to whether the compensation offered was accepted without protest is essentially a question of fact to be determined on the basis of the evidence on record. We have perused the material on record and the finding recorded by the High Court in this regard. The High Court found that the Collector made his Award on 27th June, 1985 and an application for making a reference was filed within time on 6th August, 1985. The claimants examined themselves on oath, and it was not even suggested to them that they had accepted the compensation without protest. No evidence was brought on record to establish that the compensation was accepted by the claimants without protest. On the other hand the fact that the claimants promptly filed their objections and sought reference under Section 18 of the Act established that the claimants had not accepted the compensation without protest, but their acceptance was subject to the order that the Reference Court or any other superior court may pass. The High Court was, therefore, justified in holding that there was no material to substantiate the contention that the compensation had been accepted without protest by the claimants.

Shri Reddy also contended that the claimants were not entitled to be paid any compensation for lands which they possessed in violation of Section 154(1) read with Section 167(1) and (2) of the U.P. Zamindari Abolition Act (U.P. Act No. 1 of 1951) since such lands vested in the State Government and claimants had no right to claim compensation for such lands.

It appears from the record that the plea urged on behalf of the Land Acquisition Officer was initially upheld by the Reference Court, but later that judgment was reviewed and it was held that there was no evidence on record to prove that the claimants had acquired any land in violation of the aforesaid provisions. The High Court considered the provisions on which reliance was placed by the State particularly, Sections 154 and 167 of the U.P. Zamindari Abolition Act. Section 167 of the U.P. Zamindari Abolition Act in terms provides that where any land has vested in the State Government, it shall be lawful for the Collector to take possession of such land and to direct that any person occupying such land be evicted from such land. The Collector is also authorized to use or cause to be used such force as may be necessary for the purpose of taking over such possession or evicting such unauthorized persons. The High Court found that there was no evidence whatsoever to substantiate the plea that the claimants were in illegal and unauthorized possession of lands which had vested in the State of Uttar Pradesh. It was not shown that at any stage any action was taken to evict and dispossess the unauthorized occupants of such lands which had vested in the State of Uttar Pradesh. On the contrary it was not disputed that the claimants were in possession till the date the possession of the land was taken from them pursuant to the Notifications issued under Section 4(1)

and Section 6 of the Act. Till that time they were in possession and their possession was not disturbed by any action taken by the Collector or the Gaon Sabha under any law. Thus the High Court held that there was no evidence to substantiate the contention of the State that the claimants/land-owners were in unauthorized possession of Government lands for which they could not be compensated. The High Court also noticed, and in our view rightly, that such a plea could not be raised in a proceeding under Section 18 of the Act. It is also not in dispute that the Special Land Acquisition Officer offered compensation to the claimants. That obviously was on the basis that the State recognized the claimants as the owners of the lands which were sought to be acquired. Having done so, and having made a reference to the Court under Section 18 of the Act, it could not be contended by the Special Land Acquisition Officer in the proceedings under Section 18 of the Act or in any proceedings arising therefrom that the claimants, to whom he had himself offered compensation, were not owners of the lands. The State ought to have taken appropriate proceedings, if any, permissible in law, to deny compensation to such claimants, who according to the State were in occupation of lands which had vested in the State of Uttar Pradesh. Having considered the material on record and the reasoning of the High Court we are satisfied that the High Court was right in holding that there was no material on record to prove that some of the claimants were unauthorized occupants of Government lands and, therefore, not entitled to compensation for such lands. The High Court was also right in holding that in a reference under Section 18 of the Act such a contention could not be raised because matters that may be considered by a court in a reference under Section 18 of the Act are matters enumerated in Section 18 itself as also the following sections. This was not a case where two claimants had claimed compensation in respect of the same land, or there was any dispute as to the apportionment. The State wanted the Court to hold that the persons to whom the compensation had been offered, and who the Collector had reasons to believe were interested in the land, should not be granted any compensation on the ground that they had no interest in the lands and were in unauthorized possession of Government lands.

We shall now consider the submissions urged by the claimants in the appeals preferred by them relating to acquisition of lands in village Habibpur.

According to the claimants a Notification under Section 4(1) read with Section 17(4) of the Act was published on 25th August, 1981. By the aforesaid Notification an inquiry under Section 5-A of the Act was dispensed with. Thereafter a declaration under Section 6 was also issued. The aforesaid Notification was challenged by the claimants in Civil Misc. Writ Petition No.11872 of 1981 which was decided on May 23, 1983. While deciding the writ petition, the High Court held:-

"The result of the discussion is that the notification issued under Section 6 of the Act without affording opportunity to the petitioners to file objections and without an inquiry under Section 5A is invalid. The decision to obviate the inquiry under that provisions was wholly without authority of law. The recital to that effect in the Notification under Section 4 is invalid too. The Notification dated August 25, 1981 is quashed. The respondents are directed to permit the petitioners to file objections and enquire into them under Section 5A before making a fresh declaration, if any, under Section 6 of the Act in regard to their land."

The State preferred a special leave petition before this Court but during the pendency of the special leave petition issued a Notification on July 11, 1983 inviting objections from the claimants pursuant

to the Notification earlier issued under Section 4 of the Act. After considering the objections a Notification under Section 6 of the Act was issued on October 7, 1983. The submission urged on behalf of the claimants before the High Court was that since the original Notifications under Sections 4 and 6 of the Act were quashed and a fresh Notification was issued on July 11, 1983 inviting objections under Section 5-A of the Act, the compensation to be awarded must be determined by reckoning the Notification issued on July 11, 1983 as the Notification under Section 4 of the Act. The High Court negatived the contention and held that the Notification under Section 4 of the Act issued on August 25, 1981 was in two parts. While the first part declared the need for acquisition of the lands in question for a public purpose, the second part dispensed with the inquiry under Sections 5-A of the Act. The High Court had quashed only that part of the Notification which dispensed with the inquiry under Section 5-A of the Act because there was no material on record to establish any urgency which could justify dispensing with the inquiry under Section 5-A of the Act. On a reading of the judgment and order of the High Court it was held that the first part of the Notification which was a Notification under Section 4(1) of the Act was not quashed. Adverting to the Notification issued on July 11, 1983 inviting objections under Section 5-A of the Act the High Court observed that the Notification did not even whisper that it was a Notification under Section 4 of the Act. It only recited the earlier history which led to the issuance of the Notification inviting objections. Thereafter on October 7, 1983, after considering the objections, a Notification under Section 6 was issued. No doubt this Notification makes a reference to the Notification dated July 11, 1983 as Notification issued under sub-section (1) of Section 4 of the Act. The High Court, however, did not attach much importance to this recital in the Notification issued under Section 6 of the Act because the Notification issued on July 11, 1983 did not purport to be a Notification under Section 4(1) of the Act. The Notification clearly mentioned that it was a Notification inviting objections under Section 5-A of the Act in continuation of the Notification dated August 25, 1981 issued under Section 4(1) of the Act. It further held that the High Court in the earlier writ petition did not quash the first part of the Notification dated August 25, 1981 which remained intact. Mere wrong mention of the Section in the subsequent Notification did not make the Notification inviting objections under Section 5-A of the Act a Notification issued under Section 4(1) of the Act.

Before us the same submission was urged by the counsel appearing in the appeals preferred by the claimants. Shri P.P. Rao, learned senior counsel appearing on behalf of the claimants, submitted that the Notification issued on July 11, 1983 inviting objections gave only 21 days time for filing of objections instead of 30 days. In any event he submitted that even if the aforesaid Notification was not invalidated in toto, it must be treated as the Notification under Section 4(1) of the Act. The same submission was reiterated by the other counsel appearing for the claimants in the other appeals. Mr. Tankha, learned senior counsel appearing on behalf of some of the claimants, placed reliance on the judgment of this Court reported in : Raghunath and others vs. State of Maharashtra and others and submitted that once a Section 6 Notification is issued, the Notification under Section 4 is exhausted. Therefore, in the instant case the first Notification issued under Section 6 of the Act having been quashed, the Notification under Section 4 issued earlier got exhausted and, therefore, it became necessary for the State to issue another Notification under Section 4 of the Act. There was no question of issuing a notification in continuation of the earlier Section 4 notification. According to him the second Notification cannot be said to be in continuation of the first Notification. He also relied upon the judgment of this Court in : Hindustan Oil Mills Ltd. and another vs. Special Deputy Collector (Land Acquisition).

In reply Shri Reddy, learned senior counsel, submitted that the question of validity of a Notification

could not be gone into in a proceeding under Section 18 of the Act. He also relied on the decision in Raghunath and distinguished the decision in Hindustan Oil Mills. We have carefully considered these two decisions cited at the bar and on a careful consideration of the principles laid down therein, it must be held that the claimants are not right in their contention. The submissions urged on their behalf proceed on the assumption that the Notification issued under Section 4 of the Act got exhausted after a Notification under Section 6 of the Act was issued, which was later struck down by the High Court as invalid. Reliance placed on the decision in Raghunath and others vs. State of Maharashtra and others (supra) is misplaced. In that case a similar submission was advanced on the basis of the decision of this Court in : Girdharilal Amratlal vs. State of Gujarat wherein the question for consideration of the Court was whether there could be successive declarations in respect of various parcels of land covered by a Notification under Section 4(1) of the Act and whether once a declaration under Section 6 particularising the area in the locality specified in the Notification under Section 4(1) was issued, the remaining non-particularised area stood automatically released. It was in that context that it was observed that once a valid declaration under Section 6 is made, the scope of the Notification under Section 4 will get exhausted. This Court in Raghunath, therefore, held that the aforesaid principles did not apply to a case where the declaration under Section 6 of the Act was proved to be invalid, ineffective or infructuous for some reason. This Court referred to three earlier decisions of this Court reported in : Girdhari Lal Amratlal vs. State of Gujarat ; : State of Gujarat vs. Haider Bux Razvi and : State vs Bhogilal Keshavlal and held that where a Notification under Section 6 is invalid, the government may treat it as ineffective and issue in its place a fresh Notification under Section 6 and that there is nothing in Section 48 of the Act to preclude the government from doing so. The decisions referred to by this Court clearly point out the distinction between a case where there is an effective declaration under Section 6 and a case where, for some reason the declaration under Section 6 is invalid. It further observed that in principle there was no distinction between a case where a declaration under Section 6 is declared invalid by the Court and a case in which the government itself withdraws the declaration under Section 6 when some obvious illegality is pointed out. The Court, therefore, upheld the order of the High Court and held that the issuance of a fresh declaration under Section 6 of the Act after withdrawing the earlier one issued under Section 6 of the Act did not have the effect of rendering the Notification under Section 4 ineffective and infructuous. In the case of Raghunath a Notification had been issued under Section 4 of the Act followed by a declaration under Section 6 of the Act, but realizing that the declaration was not valid since the objections filed by the petitioners had not been heard before making the declaration, the Government itself withdrew the Notification under Section 6 of the Act and made another declaration after hearing objections under Section 5-A of the Act. We have no doubt that the same principle applies to the facts of this case. Reliance placed on Hindustan Oil Mills Ltd. and another vs. Special Deputy Collector (Land Acquisition) (supra) is also of no avail to the claimants because that case was decided on its own facts. The first two Notifications under Section 4 of the Act did not clearly indicate the land that was proposed to be acquired. That became clear only when the third Notification was issued. This Court found that there were vital defects in the first two Notifications and it was really the third Notification which was effective under Section 4 of the Act. This Court observed that when there is a Notification which purports to be by way of an amendment, the question whether it is really one rectifying certain errors in the earlier one or whether its nature is such as to totally change the entire complexion of the matter would have to be considered on the terms of the relevant notifications. This Court, therefore, based its conclusion entirely on the language of the Notification. It was also observed that this did not mean that wherever there are notifications by way of amendments, it is only the last of them that can be taken as the effective notification under Section 4 of the Act. The authority, therefore, is of no assistance to the claimants. The principles laid down in Raghunath clearly apply to the facts of

the instant case and, therefore, the submission urged on behalf of the claimants must be rejected.

We, therefore, find no merit in any of these appeals and all the appeals are, therefore, dismissed but without any order as to costs.