

SUPREME COURT OF INDIA

Rajinder Singh Bhatti

Vs.

State of Haryana

C.A.Nos.4117- 4118 of 2001

(D.K. Jain and R.M. Lodha JJ.)

03.03.2009

JUDGEMENT

R.M. Lodha, J.

1. Leave granted in SLP) Nos.18030-18031/01 and SLP) Nos.18231-18232/2001.
2. This judgment will dispose of a group of fourteen civil appeals by special leave. Since common questions of law have been involved in all these appeals, it is appropriate to deal with and decide them by a common judgment.
3. We will confine ourselves only to the facts of Civil Appeals 4117-4118/2001 for the facts of this appeal are similar to the facts of the other appeals comprised in this group.
4. Rajinder Singh (1st appellant) is the owner of the land comprising in Khewat No. 609/793 Khasra No.125/21/3(0-9), 127/1/2 (2-4), 2(8-0), 3(8-18), 8(5-0), 9/1(6-12), 125/2(8-0), 23(8-0), 24(4-10) total admeasuring 51 kanals 3 marlas. Arkinder Pal Singh (2nd appellant) owns the land in Khewat No. 610/794 Khasra No.125/2/3 (1-5), 3/2(2-9), 7/2(2-0), 8(8-0), 9/1(1-0),13(8-0), 14(8-0), 15(4-10), 17(8-8), 18(8-0) total admeasuring 51 kanals 12 marlas. They also jointly own land comprising in Khewat No.611/795 Khasra No.124/14/2(5-16), 15/2(5-11), 30/2(0-8), 31(0-8), 125/9/2(6-4), 11/1/2/(1-7), 19(8-0), 20(7-19), 21/1(4-4), 124/16/1(3-10), 16/4(1-16), 125/1/2(4-8), 12(8-0) total admeasuring 57 kanals 6 marlas. The total land owned by the appellants is 160 kanals 16 marlas situate in Jagadhri, District Yamuna Nagar, Haryana.
5. The government of Haryana through Urban Estate Department, at the instance of Haryana Urban Development Authority ('HUDA') sought to acquire the land (326.43 acres) in Sector 20, Jagadhri, for the public purpose namely; the development and utilization of land for residential, institutional, commercial, communication, transport and wholesale market etc. A preliminary notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued in this regard that was published in the official gazette on March 7, 1996. The aforementioned land of the appellants was included therein. The appellants filed

objections under Section 5-A of the Act before the Land Acquisition Collector. The objections made by the appellants were not accepted and the declaration (final notification) under Section 6 of the Act was issued and published in the official gazette on March 6, 1997. The Land Acquisition Collector then issued notices under Section 9 of the Act calling upon the landowners to make their claim of compensation for all interests in the said land that they may have. The appellants filed their claim before the Land Acquisition Collector. The appellants were then informed by the Land Acquisition Collector to remain present in his office on March 3, 1999 at 11.30 A.M. According to the appellants, they remained present in the office of the Land Acquisition Collector on March 3, 1999 whole day but no award came to be announced. Since the award was not announced by the Land Acquisition Collector within two years of the publication of declaration made under Section 6, by virtue of Section 11-A of the Act, the entire proceedings for the acquisition of the land lapsed.

6. The appellants treated the lapse of the acquisition proceedings as withdrawal from the acquisition by the Government and, consequently, they filed their claim of compensation for the damage suffered by them under Section 48(2) of the Act before the Land Acquisition Collector, Urban Estate, Panchkula. The compensation was demanded on diverse grounds, inter alia, that their various units and establishments got affected by the proposed acquisition; that because of proposed acquisition they lost interest in the land and entered into an agreement to purchase the land elsewhere for establishing their industrial units, poultry farm etc., that money was invested for the purchase of that land but because of withdrawal from acquisition, the purchase agreements were cancelled and the vendors forfeited the earnest money. Since the merits of the claim have not been examined either by the Land Acquisition Collector or High Court, it is not necessary to give further details of compensation claimed by the appellants.

7. The Land Acquisition Collector vide his communication dated September 27, 1999 informed the appellants that their claim under Section 48(2) of the Act was not maintainable in view of the judgment of this Court in the case of *Abdul Majeed Sahib And Anr. vs. District Collector And Ors.*¹.

8. The appellants challenged the order/communication of the Land Acquisition Collector, Panchkula by approaching High Court of Punjab and Haryana. The Single Judge of that Court dismissed the entire group of revision applications on November 7, 2000 and upheld the view of the Land Acquisition Collector, Panchkula that claim of compensation under Section 48 (2) of the Act was not maintainable.

9. The appellants sought review of the order dated November 7, 2000. The review applications also came to be dismissed by the High Court. It is from these orders that the matters have reached this Court.

10. At this stage we may notice that vide Order dated May 1, 2008, this Court directed the State of Haryana and HUDA to file an affidavit indicating their stand with regard to the provisions of Sections 11-A, 48 & 48-A of the Act. In response thereto, an affidavit has been filed on behalf of these authorities. The stand of these authorities is that the provisions of

Section 11-A and 48 of the Act are distinct and different. As per Section 11-A, the Collector is under a statutory obligation to make an award under Section 11 within a period of two years from the date of the publication of the declaration under Section 6 of the Act. Failure on the part of the Collector to make the award within the said period, subject to the exclusion of the time as provided in the explanation attached to Section 11-A entails lapse of acquisition proceedings. On the other hand, Section 48 empowers the Government to withdraw from the acquisition of any land of which possession has not been taken. In order to withdraw from the acquisition, there has to be publication of notification withdrawing notification under Section 4(1) and the declaration published under Section 6 of the Act. As there was no notification issued and published under Section 48(1) of the Act withdrawing from acquisition of the land of the appellants covered under Notifications dated March 7, 1996 and March 6, 1997 under Sections 4 and 6 of the Act respectively, the appellants are not entitled to any compensation under Section 48(2) of the Act. They stated that acquisition proceedings have not been withdrawn but lapsed for the reason that the Collector failed to make an award under Section 11-A of the Act relating to the land of the appellants. With regard to Section 48-A, it was submitted that the said section has not been incorporated in the Act for all intents and purposes. Its application is confined to the schemes framed by the Urban Improvement Trust under Punjab Town Improvement Act, 1922.

11. An additional affidavit came to be filed by the 1st appellant after the afore-referred response was filed by the respondents. In his additional affidavit, he stated that he made application under the Right to Information Act, 2005 and has procured (i) copy of the letter dated March 5, 1999 from the Chief Administrator, HUDA; (ii) three pages of file notings regarding the decision not to approve acquisition of 326.43 acres of land in Sector 20, Jagadhri; (iii) copy of office memo dated January 10, 1997 and (iv) copy of letter dated March 18, 1999 of the Estate Officer, HUDA, Jagadhri. The 1st appellant, thus, stated in the additional affidavit that the aforesaid documents would show that the competent authority had not approved the acquisition of 326.43 acres of land in Sector 20, Jagadhri as the proposal was not viable and that the intention of the Government not to acquire the land amounted to withdrawal from the acquisition for all intents and purposes.

12. In reply to the additional affidavit, the respondents 2 to 4 reiterated that the intention of the State Government not to acquire the land is not a withdrawal from acquisition under Section 48(1) of the Act.

13. Mr. P.S.Patwalia, learned senior counsel for the appellants submitted at the outset, and in our view fairly, that Section 48-A has not been incorporated in the Act. He did not rely upon Section 48-A. He referred to the file notings regarding the decision of the Government not to approve the acquisition of 326.43 acres of land in Sector 20, Jagadhri and communication to that effect to the Land Acquisition Collector and submitted that non-approval of acquisition by the State Government was nothing but a voluntary withdrawal from the acquisition and communication of that decision to the Land Acquisition Collector was sufficient publication of the decision of the Government to withdraw from acquisition. The learned senior counsel would submit that Section 48 does not speak of notification being issued for withdrawal of acquisition and, therefore, the decision of the State Government in not approving the

acquisition was a decision of withdrawal from the acquisition and, the petition for compensation made by the appellants under Section 48 (2) of the Act was maintainable.

14. The counsel for the respondent No.1 as well as respondent Nos. 2 to 4, however, urged that first proviso to Section 11 mandates the Collector to seek approval from the appropriate government before making the award. In the present case, the Collector sought approval of the award from the appropriate government but the government did not grant approval and, thus, award could not be made by the Collector. It was submitted by the learned counsel that non-grant of approval by the State Government is not withdrawal from acquisition. Since award was not made within a period of two years from the date of publication of the declaration, the entire proceedings for the acquisition of the land lapsed. Thus, according to the learned counsel, the State Government had not withdrawn from the acquisition and there being no notification issued to that effect, petition for compensation under Section 48(2) of the Act was not maintainable.

15. On the contentions urged, two points arise for our consideration: (one) Whether in view of the decision of the government in not approving the award proposed by the Collector, the award could not be made within the period of two years from the date of publication of declaration (final notification under Section 6) and the acquisition of land lapsed, would such lapse of acquisition proceedings amount to withdrawal from the acquisition by the State Government under Section 48(1) of the Act ? (two) Whether the decision of the State Government for withdrawal from the acquisition under Section 48 (1) is mandatorily required to be published in the official gazette ? re : point (one)

16. Section 4 of the Act provides for publication of preliminary notification whenever it appears to the appropriate government that land is needed or likely to be needed for any public purpose. Inter alia, such notification is required to be published in the official gazette.

17. The person interested in the land having been notified under Section 4 may file objections to the acquisition of that land and other aspects as provided in Section 5-A.

18. When the appropriate government is satisfied after considering the report from the Collector, if any, made under Section 5-A(2) that any particular land is needed for a public purpose, as per Section 6 of the Act a declaration shall be made and, inter alia, published in the official gazette. The said declaration is conclusive evidence that land is needed for a public purpose.

19. Section 9 makes a provision for notice to persons interested in the land intimating them the government's intention to take possession and that they may claim compensation for their interest in such land.

20. Section 11 provides for an enquiry into measurements, value and claims and award by the Collector. It reads as follows:

"11. (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land at the date of the publication of the notification under Section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of - (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him: Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf: Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf. (2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. (3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act. (4) Notwithstanding anything contained in the *Registration Act, 1908*, (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act."

21. Section 11-A provides as follows: "11-A. The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse: Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement. Explanation --In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

22. Section 48 enables the State Government to withdraw from the acquisition in the circumstances mentioned therein. It reads: "48 - (1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. (2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to be person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to

the said land. (3)The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

23. From the perusal of Section 11, particularly first proviso thereto, it is apparent that the approval of the appropriate government to the award proposed by the Collector is mandatory. In other words, it is imperative for the Collector to seek previous approval of the appropriate government to the award that he proposes to make unless the case is covered by Section 11(2). If an award under Section 11 is not made by the Collector within a period of two years from the date of the publication of the declaration, the entire proceedings for the acquisition of the land shall lapse under Section 11-A. Section 11-A provides maximum period within which the award from the date of the publication of the declaration has to be made. In default, the consequence is that the entire proceedings for the acquisition would lapse. Section 48(1) empowers the State Government to withdraw from the acquisition of any land subject to two conditions namely; (i) the case is not provided under Section 36 and (ii) that possession has not been taken. Section 11- A and the consequence provided therein i.e., lapse of acquisition proceedings in the event of the award having not been made within a period of two years from the date of publication of the declaration under Section 6 is entirely distinct and different than the decision that the government may take for withdrawal from the acquisition under Section 48(1), provided possession has not been taken. It is only in a case where the Government withdraws from the acquisition under Section 48(1), that by virtue of Section 48(2), the claim for compensation for the damage suffered by the owner in consequence of the acquisition proceedings together with costs could be made. The statutory lapse of acquisition proceedings under Section 11-A as a result of non-grant of approval of proposed award by the State Government or for any other reason would not tantamount to withdrawal from acquisition by the State Government as contemplated under Section 48(1). As a necessary corollary, no claim for compensation could be made under Section 48(2) of the Act.

24. In the context of Section 48, the word "withdraw" is indicative of the voluntary and conscious decision of the government for withdrawal from the acquisition; statutory lapse under Section 11- A is entirely different. The object of Section 11-A is to arrest delay in making award. An obligation is cast on the Collector under Section 11-A to make the award within the time prescribed therein failing which statutory consequence follows namely, acquisition proceedings lapse automatically. This Court in Abdul Majeed said: "The word `withdraws' would indicate that the Government by its own action voluntarily withdraws from the acquisition; the Government has necessarily to withdraw from the acquisition, in other words, there should be publication of the withdrawal of the notification published under Section 4(1) and the declaration published under Section 6 by exercising the power under Section 48 (1). Sub-section (2) of Section 48 would then apply. In this case, admittedly, the Government had not exercised the power under Section 48(1) withdrawing from the notification under Section 4(1) or the declaration under Section 6. The statutory lapse under Section 11-A is distinct different from voluntary act on the part of the Government. Therefore, it must be by withdrawal of the notification by voluntary act on the part of the State under Section 48(1). Under these circumstances, the appellant is not entitled to avail of the remedy of sub-section (2) of Section 48."

25. As a matter of fact, the Land Acquisition Collector followed Abdul Majeed and held that the claim of the appellants under Section 48(2) was not maintainable.

26. As noticed above, the Land Acquisition Collector moved the government seeking its approval for the proposed award. This was imperative as per the first proviso to Section 11. The government considered the matter and did not approve the proposed award. When no such approval was granted by the government, the Collector could not have made the award and in fact he did not. As a result thereof, the acquisition proceedings lapsed. The lapse of acquisition proceedings in the circumstances under Section 11-A cannot and would not amount to withdrawal from acquisition by the government under Section 48(1). We answer the point (one) in negative. re : point (two)

27. The question now needs to be considered is: whether the decision of the Government for withdrawal of acquisition under Section 48(1) is required to be published in official gazette ? It is true that Section 48 does not in express terms require the decision of the government for withdrawal of acquisition to be published in the official gazette. In Abdul Majeed, this Court has held that there should be publication of the withdrawal of the notification published under Section 4(1) and declaration under Section 6 by exercising power under Section 48(1). Even on first principles, such requirement appears to be implicit. The Act provides for the publication of notification and declaration under Sections 4 and 6 of the Act in official gazette. Obviously the withdrawal from land acquisition proceedings by taking resort to Section 48(1) of the Act also must be in the like manner. As a matter of fact, this aspect is no more res integra. In the case of *Larsen & Toubro Ltd. vs. State of Gujarat And Ors.*² the identical contentions which have been advanced before us by the senior counsel were raised in that case. Section 21 of the General Clauses Act, 1897 was also pressed into service there. This Court considered: "It was submitted by Mr. Salve that Section 48 of the Act did not contemplate issue of any notification and withdrawal from the acquisition could be by order simpliciter. He said that Sections 4 and 6 talked of notifications being issued under those provisions but there was no such mandate in Section 48. It was thus contended that when the statute did not require to issue any notification for withdrawal from the acquisition, reference to Section 21 of the General Clauses Act was not correct. Section 21 of the General Clauses Act is as under: "

21. Power to issue, to include power to add to, to amend, vary or rescind, notifications, orders, rules or bye-laws.-- Where by any Central Act, or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued." Mr. Salve said that Section 21 expressly referred to the powers being given to issue notifications etc. under an Act or Regulation and under this that power included power to withdraw or rescind any notification in a similar fashion. It was therefore submitted that when Section 48 did not empower the State Government to issue any notification and it could not be read into that provision that withdrawal had to be issued by a notification. His argument, therefore, appeared to be that on correct interpretation of Section 21 of the General Clauses Act before

reaching the stage of Section 48, the State Government could withdraw notifications under Sections 4 and 6 of the Act by issuing notifications withdrawing or rescinding earlier notifications and that would be the end to the acquisition proceedings. We do not think that Mr. Salve is quite right in his submissions. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any damage suffered by the owner during the course of acquisition proceedings is determined and given to him. It is, therefore, implicit that withdrawal from acquisition has to be notified. Principles of law are, therefore, well settled. A notification in the Official Gazette is required to be issued if the State Government decides to withdraw from the acquisition under Section 48 of the Act of any land of which possession has not been taken".

28. In view of the legal position exposited by this Court in the case of Larsen & Toubro Ltd., with which we respectfully agree, we hold, as it must be, that decision of the government for withdrawal from acquisition has to be published in the official gazette. We answer point (two) in affirmative.

29. In so far as present case is concerned, firstly, there is no decision by the government for withdrawal from the acquisition. Even if we assume for the argument sake that such decision was taken on the file, since such decision has not been published in the official gazette, there is no withdrawal from the acquisition by the State Government within the meaning of Section 48(1) of the Act. The application under Section 48(2) of the Act was, therefore, rightly held to be not maintainable.

30. In view of what we have discussed above, all these appeals fail and are liable to be dismissed and are dismissed with no order as to costs.

¹(1997) 1 SCC 297

²(1998) 4 SCC 387