SUPREME COURT OF INDIA

May George

Vs.

Special Tahsildar

C.A.No.2255 of 2006

(Dr. B.S. Chauhan and Swatanter Kumar JJ.)

25.05.2010

JUDGEMENT

Dr.B.S.Chauhan, J.

1. This appeal has been filed against the judgment and order dated 13.9.2004 passed by the High Court of Madras dismissing the Writ Appeal No.1692 of 1997 by which the Court has affirmed the judgment and order of the Learned Single Judge dated 4.12.1997 in Writ Petition No.14319 of 1986 wherein the appellant had challenged the Award made under section 11 of the Land Acquisition Act, 1894 (hereinafter called the Act) on the ground that he had been served with the notice under section 9(3) of the Act.

2. Facts and circumstances giving rise to this case are that Notification under Section 4 of the Act was issued on 7.1.1976 covering the area to the extent of 30.80 acres being part of different survey numbers and belonging to large number of persons in Seevaram Village, Saidapet Taluk, Chingleput District of Tamil Nadu for planned development of Electrical/Electronics Industrial Estate including appellant's land measuring 33 cents therein in Survey No. 36/1A/1. Considering grave urgency, filing of objections under Section 5A of the Act were dispensed with and provisions of Section 17 of the Act were resorted to. Declaration under Section 6 of the Act was made on 1.10.1976 and Award under Section 11 was made on 16.11.1979 in respect of entire land covered by the said Notification and Declaration.

3. Appellant claimed that she had purchased the said land on 27.9.1961 and mutation had taken place, thus her name stood recorded in the revenue record. Appellant's grievance has been that she had never been aware of the acquisition proceedings and she was not served with notice under section 9(3) of the Act. She was never dispossessed from the said part of the land. She was granted temporary licence for establishing Small Scale Industries on 24.11.1984 and a permanent certificate for the said purpose on 31.1.1986.

4. She got the information first time that a part of her land had been acquired only on receiving the notice dated 8.12.1986 issued by Respondent-Department to the effect that she was in illegal possession and occupation of the said part of the land and she was directed to demolish the structure put up by her.

5. Appellant, after collecting the required documents, approached the High Court by filing the Writ Petition No.14319/86 challenging the Award dated 16.11.1979 and other subsequent proceedings. The Ld. Single Judge dismissed the petition vide judgment and order dated 4.12.1997.

6. Being aggrieved, appellant preferred the Writ Appeal No.1692 of 1997 which has also been dismissed vide impugned Judgment.

> "However, the Court has given liberty to the appellant to move an application for making reference under section 18 of the Act within a period of two weeks from the date of receipt of the order and further directed the Land Acquisition Collector to make a reference, if such an application is filed within a period of four weeks thereafter, and the Court further directed the Tribunal to decide the reference within a period of three months from the date of its receipt. Hence, this appeal."

7. Shri Shekhar Naphade, Ld. Senior Counsel appearing for the appellant has raised large number of issues and made an attempt to challenge the entire acquisition proceedings though the limited prayer of quashing the Award was made before the High Court. Shri Naphade has submitted that the provisions of Section 9 are mandatory in nature and non-compliance thereof would vitiate the Award and all other consequential proceedings. Appellant had never been aware of issuance of Section 4 Notification or Section 6 Declaration or Award made thereafter. No notice had ever been served upon her in respect of acquisition proceedings. Therefore, the appeal deserves to be allowed.

8. Per contra, Shri R. Venkataramani, Ld. Senior Counsel for the respondents has submitted that the Notification under Section 4 and Declaration under Section 6 of the Act had been given due publicity as per the requirement of law. Section 9(3) notice had been affixed on the land as the appellant was not available. Even otherwise, the provisions of Section 9(3) are not mandatory and therefore, would not vitiate the Award or any other subsequent proceedings. More so, the High Court had given liberty to the appellant to make a reference under Section 18 thus, appellant cannot raise the grievance at all.

> "Reference under Section 18 of the Act would be time barred and the High Court had no competence to enhance the period of limitation.
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> The appeal is devoid of any merit and hence, liable to be dismissed."

9. We have considered the rival submissions made by learned counsel appearing for the parties and perused the record.

10. Land measuring 30.80 acres stood notified and acquired. The land consisted of large survey numbers and belonged to a large number of persons. It is not the case of the appellant that Notification under Section 4 and Declaration under Section 6 were not published or given publicity as mandatorily required under the law. Once, Award was made and possession had been taken, land stood vested in the State free from all encumbrances, it cannot be divested even if some irregularity is found in the Award. As huge area of land had been acquired for planned development of industrial town, the land of the appellant cannot be exempted on any ground whatsoever. More so, appellant's land was of negligible area in comparison of the total land acquired and therefore, at the behest of only one person, the acquisition proceedings cannot be disturbed.

11. Admittedly, acquisition proceedings/Award have been challenged at a belated stage after a decade of taking possession of the land in dispute. In the facts and circumstances of this case, it is difficult to presume that appellant had no knowledge of the acquisition proceedings. While dealing with a similar case, this Court in Swaran as under:

> "12. .....the only ground taken in the writ petition has been that substance of the notification under Section 4 and declaration under Section 6 of Act 1894 had been published in the newspapers having no wide circulation. Even if, the submission made by the petitioners is accepted, it cannot be presumed that they could not be aware of acquisition proceedings for the reason that very huge chunk of land belonging to large number of tenure holders had been notified for acquisition. Therefore, it should have been a talk of the town. Thus, it cannot be presumed that petitioners could not have knowledge of the acquisition proceedings.
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> In Swaran Lata (supra), this Court has held that acquisition proceedings cannot be challenged at a belated stage."

12. The only question remains for our consideration is as to whether the provisions of Section 9(3) are mandatory in nature and non-compliance thereof, would vitiate the Award and subsequent proceedings under the Act. Section 4 Notification manifests the tentative opinion of the Authority to acquire the land. However, Section 6 Declaration is a conclusive proof thereof. The Land Acquisition Collector acts as Representative of the State, while holding proceedings under the Act, he conducts the proceedings on behalf of the State. Therefore, he determines the pre-existing right which is recognised by the Collector and guided by the findings arrived in determining the objections etc. and he quantifies the amount of compensation to be placed as an offer on behalf of the appropriate government to the person interested. It is for the tenure holder/person interested to accept it or not. In case, it is not acceptable to him, person interested has a right to ask the Collector to make a reference to the Tribunal.

13. Section 9(3) of the Act reads as under :- "The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed

to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate"

> "Section 9 of the Act provides for an opportunity to the "person- interested" to file a claim petition with documentary evidence for determining the market value of the land and in case a person does not file a claim under Section 9 even after receiving the notice, he still has a right to make an application for making a reference under Section 18 of the Act. Therefore, scheme of the Act is such that it does not cause any prejudicial consequence in case the notice under Section 9(3) is not served upon the person interested."

14. While determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. The provision is mandatory if it is passed for the purpose of enabling the doing of something and prescribes the formalities for doing certain things.

15. This Court observed that law which creates public duties is directory but if it confers private rights it is mandatory. Relevant passage from this judgment is quoted below:-

> "It is well settled that generally speaking the provisions of the statute creating public duties are directory and those conferring private rights are imperative. When the provision of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of legislature, it has been the practice of the Courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done."

16. *Babu Ram Upadhya*[2], decided the issue observing:-

> "For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

17. This Court held that as to whether a provision is mandatory or directory, would, in the ultimate analysis, depend upon the intent of the law-maker and that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequence which would follow from construing it in one way or the other.

18. Court held that the difference between a mandatory and directory rule is that the former requires strict observance while in the case of latter, substantial compliance of the rule may be enough and where the statute provides that failure to make observance of a particular rule would lead to a specific consequence, the provision has to be construed as mandatory.

19. Similar view has been reiterated by this Court in *Balwant Singh Ors.*[4], *Pvt. Ltd.*[5] this Court considered the provisions of the Haryana (Control of Rent & Eviction) Rules, 1976, which provided for mentioning the amount of arrears of rent in the application and held the provision to be directory though the word "shall" has been used in the statutory provision for the reason that non-compliance of the rule, i.e. non-mentioning of the quantum of arrears of rent did involve no invalidating consequence and also did not visit any penalty.

20. This Court considered the provisions of the Delhi Municipal Corporation Act, 1957, particularly those dealing with transfer of immovable property owned by the Municipal Corporation.

21. After considering the scheme of the Act for the purpose of transferring the property belonging to the Corporation, the Court held that the Commissioner could alienate the property only on obtaining the prior sanction of the Corporation and this condition was held to be mandatory for the reason that the effect of non-observance of the statutory prescription would vitiate the transfer though no specific power had been conferred upon the Corporation to transfer the property.

22. This Court has observed as under:-

> "The use of the word `shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word `shall' prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word `shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be described to the word `shall; as mandatory or as directory accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent

persons or general public, without very much furthering the object of the Act, the same would be construed as directory."

23. This Court while dealing with a similar issue held as under:

> "...The expression "may" used in the opening words of Section 5 is not directory,as has been sought to be argued, but mandatory and non-fulfilment thereof would not permit a marriage under the Act between two Hindus. Section 7 of the 1955 Act is to be read along with Section 5 in that a Hindu Marriage, as understood under Section 5, could be solemnised according to the ceremonies indicated therein"

24. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance of the provision could render entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of Legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject matter and object of the statutory provisions in question. The Court may find out as what would be the consequence which would flow from construing it in one way or the other and as to whether the Statute provides for a contingency of the non-compliance of the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid.

25. The instant case is required to be examined in the light of the aforesaid settled legal provision.

26. In fact, failure of issuance of notice under section 9(3) would not adversely affect the subsequent proceedings including the Award and title of the government in the acquired land. So far as the person interested is concerned, he is entitled only to receive the compensation and therefore, there may be a large number of disputes regarding the apportionment of the compensation. In such an eventuality, he may approach the Collector to make a reference to the Court under section 30 of the Act.

> "Court has held that if a "person interested" is aggrieved by the fact that some other person has withdrawn the compensation of his land, he may resort to the procedure prescribed under the Act or agitate the dispute in suit for making the recovery of the Award amount from such person."

27. In fact, the land vest in the State free from all encumbrances when possession is taken under section 16 of the Act. Once land is vested in the State, it cannot be divested even if there has been some irregularity in the acquisition proceedings. In spite of the fact that Section 9 Notice had not been served upon the person- interested, he could still claim the compensation and ask for making the reference under section 18 of the Act. There is nothing in the Act to show that non-compliance thereof will be fatal or visit any penalty.

28. The view taken by us hereinabove stands fortified by large number of judgments of this Court wherein it has been held that if there is an irregularity in service of notice under sections 9 and 10, it could be a curable irregularity and on account thereof, Award under *Mahalakshmi Ammal & Ors.*[8] *and Nasik Municipal Corporation v. Harbanslal Laikwant Rajpal and Ors.*[9].

29. Be that as it may, the Writ Court rejected the contentions raised by the appellant after being fully satisfied that the notice under section 9(3) was affixed on the part of the land in dispute as the appellant was not available; appellant was not the resident of the area; and if instead of Smt. in the notice/documents, she had been shown as "Thiru", it would be immaterial so far as the merit of the case was concerned. The Court was fully satisfied that notice had been affixed on the land, satisfying the requirement of law and the Award had been made within limitation. Though appellant was aware of the proceedings conveniently, chose to remain silent and made use of the notice, asking her removal from the unauthorised occupation as the basis of challenging the Award and land acquisition proceedings after inordinate delay of 10 years and vesting of land in the State itself.

> "The same findings have been affirmed by the Appellate Court."

30. In case the High Court has considered the matter in detail and recorded the findings on factual question, this Court may not examine.

31. We also fail to understand that in case the High Court has granted the relief to the appellant to make the application for making a reference under Section 18 of the Act and further directions have been issued to the Collector to make the reference and further to the Tribunal to decide the same within the stipulated period, instead of approaching this Court in appeal, the appellant ought to have pursued that remedy.

> "Submissions have been made on behalf of the respondents that as the Court lacks competence to extend the period of limitation, direction issued by the High Court giving liberty to the appellant herein to make an application for making reference under Section 18 is without jurisdiction. Such a submission cannot be examined for the simple reason that the respondents-authorities have chosen not to challenge the impugned Judgment. Thus, we are not in a position to examine the correctness of that submission or making any observation regarding the law of limitation for the purpose of making reference. This question is left open."

32. In the facts and circumstances of the case, the appeal fails and is, accordingly, dismissed.

[1] *AIR 1952 SC 181*
[2] *AIR 1961 SC 751*
[3] *AIR 1975 SC 2190*
[4] *AIR 2004 SC 2036*
[5] *AIR 1989 SC 1160*

[6]*(2000) 7 SCC 679*
[7]*(2009) 1 SCC 714*
[8]*(1996) 7 SCC 269*
[9]*(1997) 4 SCC 199*
[10]*(2009) 10 SCC 689*