

SUPREME COURT OF INDIA

The Commissioner, Corpn. of .

Vs.

R.Sivasankara Mehta & Anr.

C.A.No.5740-5741 of 2005

(Asok Kumar Ganguly and Swatanter Kumar

13.05.2011

JUDGMENT

Asok Kumar Ganguly, J.,

1. We have heard learned counsel for the parties including the learned senior counsel appearing for Chennai Metro Rail Limited. The Interlocutory Application Nos. 5-6 filed on behalf of the Chennai Metro Rail Limited for being impleaded are allowed.

2. The Commissioner, Municipal Corporation of Chennai is in appeal before us, impugning the judgment and order passed by the Division Bench of the Madras High Court dated 18.1.2005, whereby the learned Judges of the Division Bench affirmed the order of the learned Single Judge dated 24th September, 1999 on two writ petitions filed by the land owners who are respondent(s) herein. The facts leading to this case are that by notification dated 3rd January, 1949 an Award was passed by the Special Secretary for Land Acquisition, Madras in respect of the land which was acquired under the provisions of the Land Acquisition Act. It is not in dispute that reference proceedings were initiated in 1949 itself and upon getting the enhanced compensation, the land owners did not take the challenge any further. Under Section 16 of the Act, the land acquired, vested in the State in 1962, free from all encumbrances. Long thereafter, in 1995 representation was made by the respondent(s) herein for release/re-conveyance of a portion of the land which was acquired in 1949 inter alia on the ground that the appellant-Corporation was not utilising the same.

3. On such a representation, the Government by an Order dated 10th March, 1995 directed the appellant- Corporation to re-convey a portion of the lands measuring 5 grounds and 416 sq. ft. in R.S. No.324/2 to Thiruvargal R. Neelakanta Mehta and R. Sivasankara Mehta and to their legal heirs or their nominees under ex-owner category, on collection of the compensation amount paid by the government for the acquisition of lands measuring 5 grounds and 416 sq. ft. in R.S. No. 324/2 with interest after completing all formalities. After the said order was passed, a representation was made by the appellant-Corporation to the Secretary, Government of Tamil Nadu, M.A. and W.S. Department to the effect that the said area can be better utilised for the purpose of parking of vehicles in view of manifold increase

in traffic in that part of the city. A request was, therefore, made to stay the operation of the notification relating to re-conveyance for consideration of the request of the Corporation.

4. Upon such representation from the appellant- Corporation, the Government of Tamil Nadu by an Order dated 25th July, 1995 cancelled the order of re- conveyance issued in G.O. Ms. No.45, M.A. & W.S. dated 10th March, 1995.

5. This order of 25th July, 1995 was impugned by the respondent(s) herein by filing two writ petitions. The learned Single Judge allowed the writ petitions inter alia on the ground that the Government is bound by provisions of promissory estoppel and also by reason of the fact that the order of cancellation of re-conveyance was passed without affording any opportunity of hearing to the land owners. The said decision of the learned Single Judge was challenged by the present appellant before the Division Bench of the High Court. The Division Bench of the High Court, in paragraph 17 of its judgment quoted from the judgment of the learned Single Judge and in paragraph 19 of the judgment quoted the provisions of Section 48-B which was introduced by Tamil Nadu Amendment Act, 1996 (Act 16 of 1996). Ultimately, the Division Bench held that the decision of the Government in rescinding its initial order of re-conveyance is bad. The Division Bench was not, therefore, inclined to interfere with the order passed by the learned Single Judge and dismissed the appeal of the Corporation and affirmed the decision of the learned Single Judge.

6. Assailing both these judgments, learned senior counsel for the appellant urged various contentions before us. The first question which was urged before us was that at the time when the exercise was made by the Government for re-conveyance, Section 48-B was not in existence.

7. Admittedly, Section 48-B came on the statute book in 1997 by the Land Acquisition (Tamil Nadu Amendment) Act, 1996 (being Act 16 of 1997). The assent of the President to the said Act was received on 14th March, 1997.

8. Section 48-B runs as follows:-

"48-B. Transfer of land to original owner in certain cases.-Where the Government are satisfied that the land vested in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

9. On perusal of Section 48-B it is clear that the same is not retrospective in operation. The said provision, which is a departure from Section 48 can apply only prospectively.

10. This Court also considered the purport of that provision in *Tamil Nadu Housing Board v. Keeravani Ammal and Ors., reported in*¹ The learned Judges in paragraph 11 of *Keeravani Ammal* (supra) held as follows:-

"Section 48-B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be strictly construed and strict compliance with its terms insisted upon. Whether such a provision can be challenged for its validity, we are not called upon to decide here."

11. In this connection, it is necessary to have a look at provisions of Section 48 of the Land Acquisition Act, 1894, which was holding the field in 1995, when re-conveyance was purportedly ordered by the State Government vide its order dated 10.3.1995. Section 48 of the Act is set out below:

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.- (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 the 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."

12. Under the provisions of Section 48 of the principal Act, we are afraid, the respondent(s) has no right of asking for re-conveyance in 1995 inasmuch as it is an admitted case of the parties that possession of the property was taken over by the State as early as in 1949 when the Award was passed and the land vested in the State Government in 1962. Thereafter it was transferred to the Corporation. This aspect of the case, which goes to the root of the question, was totally missed by the High Court.

13. Even if we accept, for the sake of argument, that Section 48-B was available in 1995 when re-conveyance was ordered even then the respondent(s) has no case.

14. In a recent judgment rendered by this Court in the case of *Tamil Nadu Housing Board v. L. Chandrasekaran (Dead) by Lrs. and Others reported in²* it has been held that before an order of release can be made under Section 48-B, the Government must be satisfied that the land which is sought to be released is not required for the purpose for which it was acquired or for any public purpose.

15. Admittedly, in the instant case such condition has not satisfied in view of the representation of the appellant-Corporation that they need the land for utilising it as parking

space in view of ever increasing growth of car population in the city of Chennai. This is certainly a public purpose.

16. The learned Counsel for the Metro Rail has filed an affidavit to the effect that the Government is contemplating the use of the said land for its ongoing project which is again, very much a public purpose.

17. The second question is that the land is no longer vested in the Government as it divested itself by giving it over to the Corporation. Therefore, the conditions stated in L. Chandrasekaran (supra) are not satisfied herein. So the exercise of power by the State Government in cancelling its previous order of re-conveyance cannot be faulted.

18. No case of malafide or perversity has been made out in the writ petitions. The learned counsel for the respondent(s) stated that its only case of alleged malafide has been made out in ground (c) at page 35 of the paper book. The said ground is set out herein below:-

"Cancellation of reconveyance order is colourable exercise of power. All materials have been considered including the views of the Corporations in detail in G.O. Ms. No. 48 dated 10.3.1995.

Corporation stated that there is a
proposal to construct fully air

conditioned office cum shopping complex. However, Government has rejected the proposal and ordered reconveyance. As per the impugned order, Corporations has given a proposal for using it as parking space. It is submitted that above proposal is dated 5.6.1998, long after Bankers pay order has been received from the petitioner. It is submitted that facts set out above make it very clear that impugned order is based on extraneous considerations and purely colourable exercise of power."

19. Unfortunately we are of the opinion that the said ground does not make out any case of malafide exercise of power by the Government. Specific pleadings with particulars must be there to make out a case of malafide and the person against whom malafide is alleged must be impleaded. No such pleadings are at all present in this case.

20. Apart from the aforesaid question, in L. Chandrasekaran (supra), this Court held that if any re- conveyance is to be made that has to be done on the basis of the present market value. The purported order of re-conveyance initially made by the Government was not made on that basis either.

21. In the facts of this case there can be no question of promissory estoppel which is an equitable doctrine. In the context of the clear provision of Section 48 of the principal Act which was governing its field in 1995, when re-conveyance was purportedly ordered, equity has no application. Nor is there any scope for principle of natural justice to operate when the

person complaining of its infraction cannot show any right of his which has been violated. In the given facts of the case and the clear mandate of Section 48 of the principal Act, we do not discern any right of the landowners to apply for re-conveyance in respect of a land which had vested in the Government long ago.

22. Therefore, examining the matter from all its angles, we do not find any reason to sustain the impugned judgment passed by the High Court.

23. The appeals are, therefore, allowed. The judgment of the High Court is set aside.

24. No order as to costs.

¹*AIR 2007 SC 1691*

²*(2010) 2 SCC 0786*