SUPREME COURT OF INDIA

Binabai Bhate

Vs.

State of M.P. & Ors.

C.A.No. 4920 of 2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

04.07.2011

JUDGMENT

Dr. Mukundakam Sharma,J.,

SLP (Civil)No. 28905 of 2008

1. Leave granted.

2. This appeal is directed against the judgment and order dated 29.08.2008 passed by the High Court of Madhya Pradesh at Jabalpur, in Writ Appeal No. 1063 of 2003, whereby the High Court dismissed the said appeal filed by the appellant herein and upheld the order dated 16.04.2003 passed by the Single Bench of the High Court of Madhya Pradesh at Jabalpur.

3. The appellant is Bhuswami of certain lands situated at Tehsil Khandwa, District East Nimar, Madhya Pradesh. A draft development plan was published under the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereafter referred to as "The Act"). The apellant came to know that the draft development plan included some portion of her land with the intention of making it available for Navchandi Mela. However, the land was ancestral and he appellant intended to transfer it by a will duly registered and already executed.

4. The Appellant submitted objections on 24.03.2000 and a committee was constituted consisting of Member of Parliament, Member of Legislative Assembly, Mayor, President Zila Panchayat, Sarpanch Gram Panchayat and Collector. The committee considered the objections and decided that the land was not required and the objections of the appellant and others were accepted stating that the land in question was not required. Accordingly, a resolution dated 26.05.2000 was passed by the committee in favour of the Appellant.

5. In spite of the resolution passed by the committee, by a notification dated 28.02.2001 published in Madhya Pradesh Raj Patra, the Appellant came to know that the State Government had included certain lands belonging to the appellant in the modified

development plan. The Appellant filed review Petition under section 23(A) of the Act before the State Government which was rejected by order dated 24.07.2002 stating that there is no provision for review of the order in the Act.

6. The Appellant thereafter, filed Writ Petition in the High Court which was dismissed by the Learned Single Judge by order dated 16.04.2003. Since the Letter Patent jurisdiction was abolished, the appellant filed Special Leave Petition in the Supreme Court. During the pendency of the Special Leave Petition the provision of Letter Patent jurisdiction was revived. The Special Leave Petition was allowed to be withdrawn for filing Letters Patent Appeal in the High Court.

7. The Appellant filed Writ Appeal before the High Court of Judicature, Jabalpur which was dismissed by order dated 29.08.08. The present appeal, as stated hereinbefore, is directed against the aforesaid order passed by the High Court.

8. The learned counsel appearing for the appellant submitted that after passing of the Resolution by the Committee constituted accepting the objections/suggestions of the appellant, the said resolution of the Committee should have been accepted by the Government as the same was binding, but instead the State Government without providing any opportunity of hearing to the appellant rejected the said recommendation of the committee and proceeded to acquire the land without giving any opportunity of hearing and thus the said action of the State Government is in violation of the principles of natural justice.

9. It was also submitted that the entire acquisition process was in colourable exercise of power and not for any public purpose and that it was done for extraneous consideration. It was also submitted by the learned counsel appearing for the appellant that the appellant had all along been assured that the land belonging to her will not be used for or utilised by the State Government for the purpose of holding a Mela and therefore, the acquisition of the said land came as a complete surprise to the appellant.

10. It was also submitted that as per the report of the Committee constituted of Member of Parliament, Members of Legislative Assembly, Mayor, President of Zila Panchayat, Sarpanch Gram Panchayat and Collector, the land, in question was not required and the objections of the appellant having been accepted there was no requirement of the land in question and therefore the action taken is a colourable exercise of power. It was also submitted that the High Court committed a serious error in interpreting the provisions of Section 23 of the Act and in holding that there was no provision given under the Act for review of orders.

11. On the other hand, the learned counsel appearing for the respondent submitted that the resolution passed by the aforesaid committee was not final and was only of recommendatory nature and that it was open for the State Government to take its own decision considering the facts of each

case. It was also submitted that there was no violation of the principles of natural justice and that the appellant was provided sufficient opportunity of hearing.

12. It was also stated that the appellant would be paid compensation as and when the land is acquired by the Municipal Corporation of Khandwa, and therefore, at the present moment, the possession of the land is with the appellant. It was also submitted that the decision is bona fide and was taken in accordance with law.

13. Before the High Court also similar submissions were made by the appellant. In its order dated 16.4.2003 the High Court rejected the said submissions holding that they are without any merit. The High Court held that as per the scheme of Sections 17 and 18 of the Act, the recommendation of the Committee is not final, binding and conclusive and therefore it was open for the State to take its own final decision in accordance with law. It was also held by the High Court that a review of the order of the nature which was filed by the appellant before the High Court was not maintainable in terms of the provisions of Section 23A of the Act.

14. In the order passed in the writ appeal dated 29.08.2008, the High Court while upholding its order dated 16.04.2003 observed that the State Government did not accept the recommendations made by the Committee, therefore it was not necessary for the State to issue a modified plan. For the final plan, the State Government did issue the plan, as per section 19(2) and had invited objections form the persons who are likely to be affected by inclusion of their land. The Court also observed that if the appellant was of the opinion that certain documents had been kept back by the State Government, then he could have always asked the learned Single Judge to issue directions to the State Government for the production of said documents. For failure to call for such documents, it cannot be held that the State Government accepted the recommendations made by the Committee, did not include the land in the final plan and all of a sudden issued the final plan against the interest of the appellant.

15. In the light of the submissions made by the counsel appearing parties, we have minutely perused the records as also the orders passed by the High Court. On a careful reading of the provisions of Section 17A, Section 18 and Section 19 of the Act, we become aware regarding the procedure and the scheme provided for publication of a draft development plan and also for approval and preparation of the final development plan.

16. Sub-section (2) of Section 17A of the Act makes it crystal clear that the Committee has the power to consider the draft development plan prepared by the Director under Section 14. It also has the power to suggest modifications and alterations in the aforesaid draft development plan prepared. The Committee has also been empowered to hear objections after publication of the draft development plan under Section 18 and suggest modifications or alterations, if any, to the Director. It is, therefore, clearly established that the aforesaid decision and resolution of the Committee is only suggestion and recommendation which is required to be taken notice of by the State Government. Once, the development plan is submitted on completion of the procedure and process prescribed under Sections 17 and 18 of the Act, the State Government is empowered under Section 19 of the Act either to approve

the development plan or to approve the same with some modifications as it may consider necessary. A further power is also vested on the State Government to return the same to the Director to modify the same or to prepare a fresh plan in accordance with such directions as the State Government may deem appropriate.

17. In the present case, the development plan as prepared under Section 14 was approved by the State Government without any modification and therefore there was no question of inviting any further suggestions as no modification was suggested to the said development plan. In view of the said position also, there was no question of giving any hearing to the appellant in the present case, and therefore the issue raised with regard to alleged violation of the principles of natural justice is without any merit.

18. The aforesaid provisions namely Section 17, 18 and 19 of the Act give a broad scheme laying down the procedure as to how a development plan is to be approved by the State Government as also the procedure as to when it becomes final and operational. The aforesaid scheme of the provisions clearly states that a recommendation of the Committee is only recommendatory and advisory in nature and such recommendations of the Committee are required to be considered by the State Government, but the absolute and final power is rested on the State Government to approve or reject the draft development plan or to approve the same with some modifications as it may deem appropriate.

19. The resolutions passed by the Committee cannot be said to be absolute, final and binding and the State Government possesses the final authority in the matter of giving approval to the development plan. In any case, in the present case, the State Government approved the draft plan without any modification and therefore provisions of sub-sections (2) and (3) of Section 19 are not applicable to the facts and circumstances of the present case. Despite the said legal provision, the State Government in the present case has issued a final plan and also invited objections from the persons who are likely to be affected by inclusion of their land. Even thereafter the appellant did not submit any objection and therefore the question of giving a hearing to the appellant at that stage did not arise. So from whatever angle the contentions of the appellant are examined, the same are not found to be worthy of acceptance.

20. So far the power of review is concerned, the High Court does not have the power of review as such power of review has to be specifically provided for in the Act. A power of review against an order passed is a creature of the statute and since no such power of review is provided for under the provisions of the Act, the High Court was justified in holding that there could be no review to the order passed. So far the review and modifications of the development plan or adjoining plan as provided in Section 23 and 23A of the Act are concerned, the said provisions are not applicable in the present case for the State Government has not made any modification in the development plan, and therefore, the contentions appearing for the appellant are held to be without any merit. Besides, the said power is exclusively vested with the State Government and in an appropriate case, the State Government is empowered to exercise such power as and when deem proper. This is not a case where the State Government thought it fit to invoke such power.

21. We, therefore, find no error in the judgment passed by the High Court. The impugned order does not suffer from any infirmity. The present appeal is, therefore, dismissed as without any merit. However, there shall be no order as to costs.