

SUPREME COURT OF INDIA

Kulsum R.Nadiadwala

Vs.

State of Maharashtra

C.A.No.4473 of 2000

(H.L.Dattu and Anil R.Dave JJ.)

17.04.2012

ORDER

1. This appeal is directed against the judgment and order passed by the High Court of Judicature at Bombay in Writ Petition No.2699 of 1987 dated 21.07.1998. By the impugned judgment and order, the High Court has dismissed the writ petition filed by one of the interested persons, having interest in land Survey No.119/3 Pt. situated at Village Malad, Taluka, Borivali, District Bombay Suburban.

2. Section 4 Notification dated 24.10.1975, under the provisions of the Land Acquisition Act, 1894 (for short 'the Act') came to be issued by the State Government to acquire certain piece of lands situated in different villages for the purpose of establishing Central Ordinance Depot for the Union of India (Military).

3. The beneficiary of these lands is the Central Government. They are served, but at the time of hearing of this appeal, they were not present before the Court and, therefore, we had no occasion to hear the learned counsel for the Union of India.

4. We have heard Mr. Jay Savla, learned counsel for the appellants and Mr. Shankar Chillarge, learned counsel for the State of Maharashtra.

5. The appellants, herein, claim that they are the legal heirs of deceased Ismail Nadiadwala. During the lifetime of Ismail Nadiadwala, the State Government had issued notifications under Sections 4 and 6 of the Act to acquire various lands for a public purpose, namely, for establishing military personnel ordinance on the land which belonged to late Ismail Nadiadwala and one Ibrahim Nadiadwala. They had a joint interest in the property.

6. After such acquisition and without issuing any notice to the appellants and after hearing only Ibrahim Nadiadwala, the award came to be passed by the State Government vide order dated 23.09.1986. Immediately, thereafter, Ibrahim Nadiadwala had requested the State Government to permit him to look into the records to find out whether he had issued with any notice. Since such permission was not granted to him, he had filed a petition before the High Court under Articles 226 and 227 of the Constitution of India, inter alia, questioning the notifications issued under Sections 4 and 6 of the Act.

7. As we have already noticed, the Division Bench of the Bombay High Court has dismissed the petition filed by the appellants.

8. Learned counsel appearing for the appellants would contend that the respondent-State, while issuing the notification under Section 4(1) of the Act, had not complied with the mandatory requirement, that is, to publish the notification in a public place. Secondly, it is stated that the appellants' predecessor was recorded as the owner of the property and no individual notice was issued to him. It is further contended that Section 6 of the notification was the subject matter of a Writ Petition before the High Court in Writ Petition No.149/1979. The High Court vide its order dated 6.9.1982, while allowing the petition, had quashed the notification dated 22.11.1978 issued under Section 6 of the Act and the order so passed was not questioned by the respondent-State before any other forum.

According to learned counsel, since the order so passed by the learned Judge had attained finality, the respondent cannot now contend that it was confined only to the appellants in the said Writ Petition. Learned counsel further submits that after the Award was made, possession of the lands requires to be taken as provided under Section 16 of the Act. According to learned counsel, in the instant case, the respondents have not taken possession of the lands as envisaged under Section 16 of the Act. Their stand appears to be that since the lands were already in possession of the Defence establishment, possession as required under Section 16 of the Act need not be resorted to. Lastly, learned counsel would submit that after Section 6 notification was issued at the instance of the beneficiary of the notification, certain lands came to be deleted from Section 6 notification and the same could not have been done without resorting to provisions of Section 48 of the Act. For all these reasons, the learned counsel would contend that, the notification issued by the State Government qua the appellants requires to be quashed.

9. Per contra, learned counsel for the State submits that there was delay on the part of the legal representatives of the registered owner and they did not approach the Court within a reasonable time, and therefore, the Writ Petition ought to have been rejected by the High Court only on the ground of delay and laches on the part of the appellants in approaching the Court. Insofar, as the other legal contentions advanced by the learned counsel for the appellants before us, it appears that the learned counsel had no answers whatsoever. In fact, he did not also answer them.

10. Section 4 of the Land Acquisition Act reads as under:

Publication of preliminary notification and power of officers thereupon.-

(1) Whenever it appears to the [appropriate Government] the land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workman,- to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub- soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so. The said provisions came up for consideration before this Court in Jaiswal[1985] INSC 107; , (1985) 3 SCC 1. In the said decision, the Court specifically observed that there are two requirements for the issuance of Notification under Section 4 of the Act. The first requirement is that the notification requires to be published in an Official Gazette and the second requirement is that the acquiring authority should cast public notices of the substance of such notification in a convenient place in the locality in which the land proposed to be acquired is situate. The Court has further observed that both the contentions are cumulative and they are mandatory.

11. In the instant case, the respondents before the High Court had filed their reply affidavit. They did not dispute the contentions of the appellants that they had not issued any public notices as required under Section 4 of the Act. They only reiterated that such notification was published in the Official Gazette.

12. Since the mandatory requirement as required under Section 4(1) of the Act is not complied with by the respondents, while acquiring the lands in question, in our opinion, the entire acquisition proceedings requires to be declared as null and void. This Court in J&K Housing Board v. Kunwar Sanjay Krishan Kaul,(2011) 10 SCC 714, has observed that all the formalities of serving notice to the interested person, stipulated under Section 4 of the Act, has to be mandatorily complied with in the manner provided therein, even though the interested persons have knowledge of the acquisition proceedings. This Court further observed thus:

32. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act.

Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the manner provided therein. Merely because the landowners failed to submit their objections within 15 days after the publication of notification under Section 4(1) of the State Act, the authorities cannot be permitted to claim that it need not be strictly resorted to.

13. In view of the conclusion that we have reached on the first issue canvassed by learned counsel for the appellants, we do not think that the other issues that the learned counsel for the appellants has raised and canvassed before us need to be answered.

14. In view of the above, while allowing this appeal, we restrict the claim of the appellants only to 50% of the lands in question, namely, lands in Survey No.119/3 Pt. situated at Village Malad, Taluka, Borivali, District Bombay Suburban.

15. We further direct that the respondents shall handover 50% of the vacant possession of the said land to the appellants forthwith.

No costs.

Ordered accordingly.