SUPREME COURT OF INDIA

Bangalore Development Authority

Vs.

Vijaya Leasing Ltd.

C.A.No.7141 of 2005

(Dr.B.S.Chauhan and Fakkir Mohamed Ibrahim Kalifulla JJ.)

01.04.2013

ORDER

1. These two appeals arise out of the common judgment of the Division Bench of the Karnataka High Court at Bangalore dated 29.3.2005 in Writ Appeal No.4947 of 2002. Though the issue lies in a narrow compass as to the power of writ court under Article 226 of the Constitution to correct certain errors which is quite apparent on the face of the record though not specifically challenged by a party, in order to appreciate the order of the learned Single Judge dated 26.8.2002 which sought to remedy the manifest injustice by setting aside a notification passed under Section 48 (1) of the Land Acquisition Act dated 27.6.2000 without any specific challenge to the said Notification.

2. By the impugned judgment the Division Bench set aside the order of the learned Single Judge on the sole ground that there was no specific challenge to the Notification dated 27.6.2000. To appreciate the points raised, it is necessary to refer to the basic facts in a brief account.

3. There was a preliminary Notification dated 21.9.1967 under the provisions of Bangalore Improvement Act, 1945 (Mysore Act V of 1945) which is analogous to Section 4 of the Land Acquisition Act. By the said notification, there was a proposal to acquire survey No.57 of Thippasandra Village, K.R. Puram Hobli by the Government for the formation of a layout called HAL, second stage layout by the appellant herein. The final notification was issued on 15.7.1971 under the same Act purported to be one under Section 6 of the Land Acquisition Act.

4. Award was, however, passed by the Acquisition Authority on 21.11.1983 and the same was approved on 29.11.1983 for Rs.58,426,25. Compensation was paid under the Mahazar dated 09.12.1983 and the possession was taken and handed over to the Engineering Section on the same date. After the final notification dated 15.7.1971 and six months prior to the award dated 21.11.1983, the land was sold by the original owners, namely, A. Thimma Reddy and Muniswamappa on 27.5.1983 to the vendors of the contesting respondent. The petitioner therein (respondent No.1 herein) purchased the land in question under two sale deeds on 28.1.1995. The acquisition was stated to have been de-notified under Section 48 (1) of the Land Acquisition Act by notification dated 05.10.1999. By order dated 27.6.2000 impugned in the writ petition, the said de-notification dated 05.10.1999 was recalled. The said order dated 27.6.2000 was the subject matter of challenge of the writ petition filed by the first respondent herein in WP 2565/2001.

5. By the order dated 26.8.2002, the learned Single Judge, after holding that there is no provision in the Land Acquisition Act for recalling the order passed under Section 48(1) of the Act also proceeded to hold that in any event the Notification dated 05.10.1999 for certain specified reasons had to be declared as non est in law and struck down the said notification which sought to de-notify the acquisition which became final and conclusive as on 09.12.1983 (i.e.), sixteen years after the acquisition became final.

6. In the appeal preferred by the appellant, the Division Bench while affirming the order of the learned Single Judge, insofar as it related to the setting aside of the recalling of the de-notification dated 27.6.2000, however, held that the Single Judge was not legally justified in setting aside the de-notification itself dated 05.10.1999.

7. We heard Mr. Altaf Ahmad learned senior counsel for the appellant, Mr. P.V. Shetty, learned senior counsel for the first respondent and learned counsel for the parties. We also perused the judgment of the learned Single Judge, as well as, that of the Division Bench and we are convinced that the judgment of the Division Bench impugned in this appeal deserves to be set aside.

8. As the facts are not in dispute, as stated in the opening paragraph the short question for consideration is, in the absence of a challenge to the de-notification dated 05.10.1999 whether the Single Judge was justified in setting aside the same even after holding that the subsequent recalling of the said notification by order dated 27.6.2000 was without jurisdiction.

9. A perusal of the order of the learned Single Judge would disclose that before issuing the de-notification dated 05.10.1999, the Hon'ble Minister dealing with the appropriate subject stated to have made a spot inspection along with the officials of the appellant and recorded a statement that possession was not delivered to the Government or the appellant and that it continued with the owner of the land. The said statement was recorded on 13.7.1998. One other statement found in the said proceeding was that even if possession had been handed over in the year 1983, as no layout was formed till the time of inspection i.e. in the year 1998, it was more probable that the possession continued with the owner and was not handed over to the appellant. A further reference was made to a decree of permanent injunction by the Civil Court dated 15.12.1981 in O.S. 10300/1980 against the appellant restraining the appellant from interfering with the possession of the land owner Krishna Reddy.

10. The learned Single Judged has noted the above factors after perusing the original records. The learned Judge further found that though the proceedings of the Hon'ble Minister stated that possession continued to remain with the owner and not handed over to the appellant, the Mahazar drawn on 09.12.1983 clearly disclosed that possession was handed over to the Assistant Executive Engineer on that date, that the survey had shown the boundary of the land which was acquired while handing over possession to the Executive Engineer and that the said Mahazar was attested by four witnesses apart from the signature affixed by the Revenue Officer in proof of delivery of possession in his presence.

11. The learned Judge also went through the judgment of the Civil Judge dated 15.12.1981 and found that the decree of permanent injunction granted was to the limited effect that the defendant/appellant was restrained by way of permanent injunction from interfering with the plaintiff's possession of the suit property except in accordance with law. One other factor which was found in the proceedings of the Hon'ble Minister's inspection was that the name board of the first respondent was found in a small house located in the scheduled property and, therefore, the possession with the owner should have been continued till that date. Though the Hon'ble Minister concerned was of the view that based on the above factors the acquisition had to be de-notified, a three-men Committee which considered the proceedings of the Hon'ble Minister rejected those observations and recommended that there was no necessity for de-notification of the land. Unfortunately, superseding the above decision of the Committee, the concerned

Hon'ble Minister appeared to have ordered for de- notification and that is how the said notification came to be issued on 05.10.1999.

12. The learned Judge after referring to the proceedings of the Hon'ble Minister, the decision of the three-men Committee and the reasons which prevailed upon the Hon'ble Minister to issue the de-notification held that none of the reasons mentioned for issuing de-notification were legally sustainable and, therefore, it called for an interference. The learned Judge specifically referred to the Mahazar dated 09.12.1983 wherein, after following the required formalities possession was duly handed over to the Government through the concerned Assistant Executive Engineer in the presence of the witnesses, that the Civil Court decree dated 15.12.1981 passed in OS 10300/1980 empowered the authorities concerned to resort to possession in accordance with law and, therefore, steps taken for taking possession under the Land Acquisition Act cannot be held to be in violation of the Civil Court decree and that issuance of the de- notification dated 05.10.1999 was, therefore, in gross violation of the authority vested in the Hon'ble Minister and was patently illegal and unjustified.

13. In the abovesaid background, the question for consideration is, therefore, whether such a conclusion of the learned Single Judge and the ultimate order passed by him can be held to be justified in exercise of his power and jurisdiction under Article 226 of the Constitution.

14. To appreciate the legal position we only wish to refer to two of the decisions of this Court reported in Dwarakanath v. Income Tax Officer -1965 (2) SCJ 296 and Gujarat Steel Tubes Ltd Ors. v. Gujarat Steel Tubes Mazdoor Sabha Ors. - 1980 (2) SCC 593. In Dwarakanath case the Supreme Court stated as under:

> "This article is couched incomprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature', for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country.

Any attempt to equate the scope of the power of the High Court under Article 226 of Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the Article itself."

(Emphasis added)

15. Similarly in Gujarat Steel Tubes Case (supra), the relevant principles can be culled out from paragraphs 73 and 81.

"73.While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine.

81…….Broadly stated, the principle of law is that the jurisdiction of the High Court under Article 226 of the Constitution is limited to holding the judicial or quasi-judicial tribunals or administrative bodies exercising the quasi-judicial powers within the leading strings of legality and to see that they do not exceed their statutory jurisdiction and correctly administer the law laid down by the statute under which they act. So long as the hierarchy of officers and appellate authorities created by the statute function within their ambit the manner in which they do so can be no ground for interference……."

(emphasis added)

16. We are of the view that the above principles when applied to the case on hand, it can be safely concluded that the order of the learned Single Judge in the light of the peculiar facts noted therein cannot be faulted. We also wonder as to why the Hon'ble Minister concerned should have taken upon himself the extraordinary effort of making an inspection for which no special reasons were adduced in the report. That apart none of the reasons which weighed in the report of the Hon'ble Minister reflected the true facts. The conclusion of the Hon'ble Minister that the possession continued to remain with the owner was contrary to what was found on records. The Mahazar dated 09.12.1983 as noted by learned Single Judge from the original file reveal that the conclusion of the Hon'ble Minister was ex facie illegal and untrue. The said conclusion obviously appeared to have been made with some ulterior motive and purpose and with a view to show some undue favour to the first respondent herein. The acquisition became final and conclusive as far back as on 15.7.1971 when Section 6 declaration came to be issued. At no point of time there was any challenge to either preliminary notification dated 21.9.1967 or the final declaration notified on 15.7.1971. Even the award dated 21.11.1983 approved on 29.11.1983 was not the subject matter of challenge in any proceedings.

17. In this context, reliance placed upon by Mr. Altaf Ahmad in the decision reported in Meera Sahni v. Lt. Governor of Delhi and others - 2008 (9) SCC 177 wherein this Court has held that transfer of land in respect of which acquisition proceedings had been initiated under Sections 4 and 6 would be final and not bind the Government and that a challenge to said proceedings by a subsequent purchaser was impermissible in law. The relevant part of the said decision has been set out in paras 17 and 21 which are as under:

> "17. When a piece of land is sought to be acquired, a notification under Section 4 of the Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a declaration to be made under Section 6 of the Land Acquisition Act and with the issuance of such a notification any encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the Government. A number of decisions of this Court have recognised the aforesaid proposition of law wherein it was held that subsequent purchaser cannot challenge acquisition proceedings and also the validity of the

notification or the irregularity in taking possession of the land after the declaration under Section 6 of the Act.

21. In view of the aforesaid decisions it is by now well-settled law that under the Land Acquisition Act, the subsequent purchaser cannot challenge the acquisition proceedings and that he would be only entitled to get the compensation."

18. Therefore, while exercising the extraordinary jurisdiction under Article 226 of the Constitution, the learned Single Judge came across the above incongruities in the proceedings of the Hon'ble Minister which resulted in the issuance of de-notification dated 05.10.1999. We fail to note as to how the ultimate order of the learned Single Judge in setting aside such a patent illegality can be held to be beyond the powers vested in the Constitutional Court. The conclusion of this Court in Gujarat Steel Tubes Case (supra) that judicial daring is not daunted when glaring injustice demands even affirmative action and that authorities exercising their powers should not exceed the statutory jurisdiction and correctly administer the law laid down by the statute under which they act are all principles which are to be scrupulously followed and when a transgression of their limits is brought to the notice of the Court in the course of exercise of its powers under Article 226 of the Constitution, it cannot be held that interference in such an extraordinary situation to set right an illegality was unwarranted.

19. In our considered opinion, the Division Bench failed to take note of the above gross illegality committed by the Hon'ble Minister while directing the issuance of the de-notification dated 05.10.1999 inspite of the fact that possession had already been handed over to the State as early as on 09.12.83 and that the decree of the Civil Court did not in any way create any fetters on the authorities concerned to take steps for possession by resorting to appropriate legal means. At the risk of repetition, it will have to be stated that the Civil Court decree to that effect was dated 15.12.1981 and that the possession was taken by taking necessary steps under the provisions of the Land Acquisition Act under the Mahazar dated 09.12.83 which was never challenged by any party much less the first respondent herein. The Division Bench unfortunately completely omitted to take note of the relevant facts while interfering with the order of the learned Single Judge. The appeals, therefore, stand allowed. The order of the Division Bench is set aside and the order of the learned Single Judge dated 26.8.2002 passed in WP No.2565 of 2001 stands restored by this common judgment.