

SUPREME COURT OF INDIA

Bankatlal

Vs.

Special Land Acquisition Officer

C.A.Nos.6087-6087A of 2002

(Sudhansu Jyoti Mukhopadhaya and Kurian Joseph JJ.)

30.06.2014

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. This appeal is directed against the impugned judgment and orders dated 28th August, 2000 and 19th December, 2000 passed by the Nagpur Bench of Bombay High Court in Writ Petition No. 593/99 and MCA No. 286/2000 in Writ Petition No. 593/99 respectively. By its first order, the High Court dismissed the writ petition preferred by the Appellant and by the second order, High Court rejected the review application filed by the Appellant.

2. The question that arises for determination is whether Section 11A of the Land Acquisition Act, 1894 is applicable to the cases where land is acquired under the provisions of Nagpur Improvement Trust Act, 1966.

3. The factual matrix of the case are as follows:

A Notification Under Section 39 of the Nagpur Improvement Trust Act, 1966 was issued for acquisition of land admeasuring 10.80 Acres situated at Khasra No. 1/1, Mouza Pardi, Tah. & District, Nagpur. Section 39 of the Nagpur Improvement Trust Act is similar to Section 4 of the Land Acquisition Act, 1894. The said land was acquired for the eastern industrial area street scheme of the second Respondent.

4. According to the Appellant, the aforesaid land was owned and was in possession of his predecessor in title late Dhanraj Jaluram Sarada (grandfather of the Appellant).

5. A declaration Under Section 45 of the Nagpur Improvement Trust Act was issued on 16th March, 1967. The aforesaid Section 45 is similar to Section 6 of the Land Acquisition Act, 1894. Thereafter, a notice dated 31st July, 1967 Under Section 9(3) of the Land Acquisition Act, 1894 was served on late Dhanraj Jaluram Sarada. Simultaneously, noticed dated 8th August, 1967 Under Section 9(1) & (2) of the Land Acquisition Act, 1894 was also served on late Dhanraj Jaluram Sarada.

6. Further, the case of the Appellant is that his predecessor in title late Dhanraj Jaluram Sarada claimed compensation on 31st January, 1968 (@ Rs. 2,00,000/- per acre) and thereafter, award Under Section 11 of the Land Acquisition Act, 1894 was passed on 27th April, 1968 by the first Respondent. The compensation fixed for 10.8 acres was @ Rs. 8,100/- which according to the first Respondent was the fair market value of the property under acquisition on the date of the first notification i.e. 13th June, 1963. The aforesaid amount was payable with interest @ 6% per annum w.e.f. 13th June, 1963 till the date of payment of the said amount.

7. At that stage late Dhanraj Jaluram Sarada filed a special civil application before the Bombay High Court challenging the award dated 27th April, 1968 and seeking a direction on Respondent No. 1 to determine the compensation payable to him against the acquisition of his land on the basis of market value as provided in the Land Acquisition Act. He further prayed to quash the notifications dated 13th June, 1963 and 16th March, 1967 published in the government gazette insofar as it relates to land belonging to him; Clause 10(3) of the schedule to the Nagpur Improvement Trust Act, 1936 was also challenged in the said writ petition. A further prayer was made to direct the Respondent No. 3 to consider his application Under Section 68 of the Nagpur Improvement Trust Act, 1966 and also to direct Respondent No. 1 to act according to the decision on the application.

8. On 18th May, 1968, the possession of the land belonging to late Dhanraj Jaluram Sarada was taken over by the Acquiring authority. After about a month i.e.

on 10th June, 1968, the High Court admitted the case and granted interim stay in the said Special Civil Application No. 452/1968. Subsequently, by judgment and order dated 8th July, 1974, the High Court held as follows:

Accordingly, the impugned awards in all the three cases are set aside and the case are sent back to the Land Acquisition Act without the aforesaid amendments introduced by paras 10(2) and 10(3) of the schedule to the Nagpur Improvement Trust Act, after giving full opportunities to the parties to make further pleadings and lead evidence. To this extent, the petitions are allowed. There will be no order as to costs.

9. From the aforesaid order, it is clear that the award dated 27th July, 1968 was set aside only with respect to compensation to be paid in favour of late Dhanraj Jaluram Sarada.

10. According to Appellant, late Dhanraj Jaluram Sarada executed a Will dated 1st May, 1980 whereunder the present Appellant as a legatee acquired title to and interest in the property in question, i.e. the property which was sought to be acquired by the Respondents.

11. Subsequently, after the death of Dhanraj Jaluram Sarada on 13th May, 1982, present Appellant filed a Writ Petition No. 191/1984 before the Nagpur Bench of Bombay High Court challenging the land acquisition proceedings. The same was admitted and an interim stay was granted by the High Court on 1st February, 1984.

12. During the pendency of the writ petition, Section 11A of the Land Acquisition Act, 1894 was brought into effect from 24th September, 1984. On 19th September, 1991, the Writ petition No, 191/1984 was withdrawn by the Appellant, in effect the interim stay in the aforesaid writ petition ceased to exist from that date.

13. The Appellant subsequently filed a Regular Civil Suit No. 2915/1991 challenging the acquisition proceedings. As no application for interim orders was preferred by the Appellant, the Trial Court did not pass any interim order or any order as contemplated by the Explanation to Section 11A of the Land Acquisition Act, 1894 in the aforesaid suit.

14. The Respondent No. 1 vide its letter dated 20th June, 1998 informed the Appellant that by virtue of the provisions contained in Section 11A of the Land Acquisition Act, 1894, there was no scope to pass a fresh award in the acquisition proceedings. Respondent No. 2, filed an application before the Respondent No. 1 on 18th August, 1998 for recalling the order dated 20th June, 1998 passed in Revenue Case No. 105/A-65/1966-67. The Appellant filed his reply to the said application on 18th December, 1998.

15. Respondent No. 1, thereafter, by an order dated 2nd January, 1999, reconsidered the case and recalled the order dated 20th June, 1998 and ordered that the case be reopened. It further fixed the case for passing an award referring the direction of the High Court dated 8th July, 1984.

16. Aggrieved by the order dated 2nd January, 1999 passed by the Respondent No. 1, the Appellant preferred Writ Petition No. 593/1999 before the Nagpur Bench of the Bombay High Court. In the writ petition the Appellant raised the following contentions:

- a) The Collector as defined in Section 3(c) of the Land Acquisition Act is not a "court" and thus has no power to review its decisions/orders passed.
- b) The power of review has to be expressly conferred on the Collector, which is absent under the Land Acquisition Act.
- c) No opportunity was given to the Petitioner before the order impugned was passed.
- d) Respondent No. 1 did not consider the fact that the provisions of Section 11A of the Land Acquisition Act were also made applicable to the proceedings pending on the date of the commencement of the Act 68 of 1984. As the award dated 27th April, 1968 was already set aside by the Hon'ble High Court vide its order dated 8th July, 1984, there was in effect no award in existence after 8th July, 1984 and that the award had to be passed within 2 years from the date of the order passed by the Hon'ble High Court or in any case, within 2 years from 19th September, 1991, i.e., the

date when the present Petitioner had withdrawn Writ Petition No. 191/1984 and the interim order had ceased to exist.

17. Initially, on 9th February, 1999, the High Court granted an ad-interim stay of the proceedings. In the said writ petition, the Respondent No. 1 filed its reply, contending that the land acquisition Officer being in Court can recall his order and, therefore, there was no illegality committed by him in recalling the order dated 20th June, 1998.

18. The Appellant preferred a Civil Application No. 3159/1999 in the aforesaid writ petition on 7th July, 1999, for certain directions to the Respondents. The Division Bench of the Nagpur Bench of Bombay High Court by the impugned order dated 28th August, 2000 dismissed the writ petition with following observation:

10. A perusal of the observations made by this Court in the above referred judgment dated 8th July, 1987 undoubtedly makes it clear that the award was not set aside for want of any procedural illegality; however, the same was quashed only to the extent of the provisions, which are referred to hereinabove, came to be declared as ultra vires by the Apex Court, which undoubtedly deals with the aspect of compensation only.

....

12. It is, therefore, clear to us that this is not the case where the Respondents failed to pass award after Section 11(A) was introduced in the Land Acquisition Act, in the year, 1984. The award was already way back in 1967. However, for the reasons stated hereinabove, the part of which was based on the provisions which were not good law. The award was quashed and set aside to that extent only and the direction was given to consider the aspect of compensation by giving appropriate opportunity to the Petitioner in this regard.

19. The review petition vide M.C.A. No. 286/2000 preferred against the same was also dismissed on 19th December, 2000 with the following observation:

There is no quarrel with the proposition laid-down by the Kerala High Court. However, in view of peculiar facts of this case, the law laid down by the Kerala High Court will not be applicable for the reason that in the instant case, this Court did not set aside the award for want of procedural illegality, but the same was quashed only in respect of compensation aspect of it in view of the declaration by the Apex Court that the provisions of paragraphs 10(2) and 10(3) of the schedule to the Nagpur Improvement Trust Act insofar as they add a new Clause 3(a) to Section 23 and a proviso to Sub-section(2) of Section 23 of the Land Acquisition Act are ultra vires and violative of the guarantee of Article 14 of the Constitution of India. The operative part of the judgment dated 8.7.1974 in Special Civil Application Nos. 495/1967, 497/1967 and 452/1968 makes it abundantly clear that the matter was remanded back for passing award only in respect of compensation in each case on the basis of Land Acquisition Act....

20. Learned Counsel for the Appellant made the following submissions:

i) After insertion of Section 11A of the Land Acquisition Act, there is a statutory obligation on the part of the Respondents to make an award within the stipulated period of two years from the date of publication of declaration, failing which the land acquisition proceedings shall automatically lapse, in view of the provision of the said Act.

It is contended that in the instant case, after award/awards was/were set aside in the year 1974, till now no fresh award was passed by Respondents, and, therefore, the entire land proceedings automatically lapsed in view of Section 11A of the Land Acquisition Act.

ii) That the Nagpur Improvement Trust Act is not a complete code in itself, insofar as acquisition of land is concerned. Although Sections 39 and 45 of the said Act are akin to Sections 4 and 6 of the Land Acquisition Act, 1894, the further process of acquisition of land is undertaken as per the provisions of the Land Acquisition Act, 1894. This is evident from the perusal of Sections 58, 59 onwards of the Nagpur Improvement Trust Act and the schedule appended thereto.

iii) Section 11A of the Land Acquisition Act is applicable to pending proceedings also. Section 11A came into operation on 24th September, 1984 and at that time the land acquisition proceedings with respect to land belonging to the Appellant was pending. In the case of the Appellant, Section 11A of the Act would thus apply from 19th September, 1991, i.e. the date from which the Appellant withdrew the writ petition No. 191/1984, and, therefore, the award ought to be passed within a period of two years from 20th September, 1991. The Respondents being failed to do so within the stipulated time, the first Respondent vide its order dated 20th June, 1998 was right in law to hold that no award could now be passed in respect of land related to the Appellant in view of Section 11A of the Land Acquisition Act, 1894. Further since 19th September, 1991, no award had been passed by the first Respondent in respect of the land in question, till 9th February, 1999.

21. Learned Counsel appearing on behalf of Respondent No. 2, contended that in the instance case, Notification Under Section 39 of the Nagpur Improvement Trust Act was published on 13th June, 1963 and similarly on 16th March, 1967, the Notification Under Section 45 of the said Act was also published. It is contended that the Respondent No. 1 also passed an award on 27th April, 1968. It is further contended that the Appellant in Writ Petition No. 452/1968 challenged the land acquisition proceedings undertaken by the Respondent, and after hearing the parties the High Court on 8th July, 1974 set aside the award only in respect of the compensation aspect of it in view of the declaration by the Apex Court that paragraphs 10(2) and 10(3) of the schedule to the Nagpur Improvement Trust Act, insofar as they add a new Clause 3(a) to Section 23 and a proviso to Sub-section (2) of Section 23 of the Land Acquisition Act are ultra vires and violative of the guarantee of Article 14 of the Constitution of India. It is contended that for the said reasons, in the writ petition the High Court directed the Respondent No. 1 to pass a fresh award after taking into consideration the aforesaid aspect and give full opportunity to the parties, only to the extent of compensation part thereof.

According to the Respondent No. 2, the award was set aside on technical ground, therefore, the matter was remitted back to the Land Acquisition Officer with a direction to pass a fresh award. As far as the Appellant is concerned, he claims to

be the owner of the agricultural land i.e. land admeasuring 10.80 acres situate at Khasra No. 1/1, Mouz Pardi. P.C. No. 17, Teh. & Dist. Nagpur and has no concern with the scheme of the Respondents for which other lands are under consideration. The possession of the land in question was taken long back in 1971. The answering Respondent has already developed and allotted more than 500 flats to the economically weaker Section 1981 onwards. The land was acquired for the purpose of implementing Nagpur Improvement Trust Scheme. After taking the possession of the land, the land was developed into small size plots and allotted the same to the economically weaker sections.

It was lastly contended that the land acquisition proceedings in the instant case are not hit by Section 11A of the Land Acquisition Act, 1894 as the said section was brought into effect on 24th September, 1984 i.e. after 10 years from the judgment dated 8th July, 1974 wherein the award was declared illegal.

22. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned Counsel for the parties, we find ourselves in complete agreement with the submission made on behalf of the Respondents and the decision of the High Court rendered in the judgment impugned.

23. Similar question whether subsequent amendments made to the Land Acquisition Act, 1894 shall automatically apply to the State Act i.e. Nagpur Improvement Trust Act, 1936, Punjab Town Improvement Act, 1922 and U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (1 of 1966) was raised and considered by this Court in Nagpur Improvement Trusts v. Vasantrao and Ors. (2002) 7 SCC 657. Relevant paragraphs 31 and 59 read as under:

31. We shall now proceed to consider whether the provisions of the Land Acquisition Act, 1894 as modified by the State Acts stand incorporated in the State Acts or whether there is a mere reference or citation of the Land Acquisition Act in the State Acts. The law on the subject is well settled. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it. The

incorporation or" an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. But this must be distinguished from a referential legislation which merely contains a reference or the citation of the provisions of an earlier statute. In a case where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The later Act along with the incorporated provisions of the earlier Act constitutes an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. However, where in a later Act there is a mere reference to an earlier Act, the modification, repeal or amendment of the statute that is referred, will also have an effect on the statute in which it is referred. It is equally well settled that the question whether a former statute is merely referred to or cited in a later statute, or whether it is wholly or partially incorporated therein, is a question of construction.

59. So far as the acquisitions under the Nagpur Act and the U.P. Act are concerned, they have been challenged on the ground that the notification corresponding to the declaration Under Section 6 of the Land Acquisition Act was made more than 3 years after the expiry of the date of the publication of the notification corresponding to the notification Under Section 4 of the Land Acquisition Act. This was on the assumption that the provisions of the Land Acquisition Act were not incorporated in the State Acts but were merely referred to and the amendment of Section 6 of the Land Acquisition Act by insertion of proviso thereto by Act 13 of 1967, would apply to the acquisitions. We have already held that the provisions of the Land Acquisition Act as modified by the State Acts and the Schedule thereto stand incorporated in the State Acts and, therefore, the subsequent amendments of Section 6 by the Land Acquisition (Amendment and Validation) Act, 1967 (Act 13 of 1967) or by Act 68 of 1984, will have no effect on the acquisition made under the State Acts. The High Court of Allahabad has taken this view while the High Court of Bombay, Nagpur Bench, Nagpur has taken the contrary view. The appeals, therefore, which are directed against the judgment of the High Court of Allahabad must be

dismissed and those against the judgment of the High Court of Bombay, Nagpur Bench, Nagpur, must be allowed. Since we have held that the Land Acquisition Act stands incorporated in the State Acts, with the consequence that subsequent amendments to the Land Acquisition Act have no effect upon the acquisitions made under the State Acts, it is not necessary to consider the submission of Mr. Rakesh Dwivedi, Senior Advocate, that in view of the judgment of this Court in T.M. Peter case MANU/SC/0388/1980 : (1980) 3 SCC 554 the absence of any time-limit in the State Acts for issuance of notification corresponding to the declaration Under Section 6 of the Land Acquisition Act will not expose the State Acts to the charge of discrimination invoking the principles enshrined in Article 14 of the Constitution.

24. Recently in *Girnar Traders (3) v. State of Maharashtra and Ors.* (2011) 3 SCC 1, a question as to whether all provisions of the Land Acquisition Act, 1894 as amended by Central Act 68 of 1984 can be read into provision under Chapter VII of Maharashtra Regional and Town Planning Act, 1966 ('MRTP Act' for short) for an acquisition, came up for consideration of this Court. Question was raised as to whether Section 11A of the Land Acquisition Act, 1894 is applicable in the case of acquisition of land under MRTP Act. The matter was referred to a Larger Bench for consideration. In the said case the Constitution Bench of five Judges held and observed:

69. For an Act to be a "self-contained code", it is required to be shown that it is a complete legislation for the purpose for which it is enacted. The provisions of the MRTP Act relate to preparation, submission and sanction of approval of different plans by the authorities concerned which are aimed at achieving the object of planned development in contradistinction to haphazard development. An owner/person interested in the land and who wishes to object to the plans at the appropriate stage a self-contained adjudicatory machinery has been spelt out in the MRTP Act. Even the remedy of appeal is available under the MRTP Act with a complete chapter being devoted to acquisition of land for the planned development. Providing

adjudicatory mechanism is one of the most important facets of deciding whether a particular statute is a "complete code" in itself or not.

86. At the very outset, we may notice that in the preceding paragraphs of the judgment, we have specifically held that the MRTP Act is a self-contained code. Once such finding is recorded, application of either of the doctrines i.e. "legislation by reference" or "legislation by incorporation", would lose their significance particularly when the two Acts can coexist and operate without conflict.

135. While applying any of the doctrines, the Court will have to take care that there is no distortion or destruction of the provisions of the principal statute. For examining this aspect, it really would not matter whether we apply the doctrine of incorporation or reference to the facts of the present case. It will have to be examined on the touchstone of effective and complete workability while protecting legislative intent. Primarily, we have to examine whether incorporating provisions of Section 11-A of the Land Acquisition Act into the provisions of the MRTP Act by reference would disturb the scheme of the MRTP Act and cause legal and practical impediments in the execution of this Act.

137. The Court cannot lose sight of one very important fact that the MRTP Act is an Act relating to planned development and acquisition is an incidental aspect thereof. Planned development is quite different from merely "achieving a public purpose" for which the land is acquired under the provisions of the Land Acquisition Act. Development plan, regional plan and town planning scheme are major events in the development of a State. They are controlled and guided by different financial, architectural and public interest for the development including macro and micro planning of the entire State.

138. The provisions relating to planned development of the State or any part thereof, read in conjunction with the object of the Act, show that different time-frames are required for initiation, finalisation and complete execution of such development plans. The period of 10 years stated in Section 127 of the MRTP Act, therefore, cannot be said to be arbitrary or unreasonable ex

facie. If the provisions of Section 11-A of the Land Acquisition Act, with its serious consequence of lapsing of entire acquisition proceedings, are bodily lifted and read into the provisions of the MRTP Act, it is bound to frustrate the entire scheme and render it ineffective and uncertain. Keeping in view the consequence of Section 11-A of the Central Act, every development plan could stand frustrated only for the reason that period of two years has lapsed and it will tantamount to putting an end to the entire development process.

139. Another reason for rejecting the contention of the Appellants is that for the full and complete implementation of the scheme dehors such reservation, allotment and designation, lands have to be acquired and once acquisition as argued, fails on the application of Section 11-A of the Central Act, those lands would have to be restored to the owners while lands of other plot owners under the same scheme would continue to be under reservation, allotment or designation. Even this would render the scheme unworkable. If the legislature has opted not to introduce any such limitation in the MRTP Act, then to read the same with reference to the provisions of the Land Acquisition Act would be unjust and render the scheme under the State Act completely unworkable. That certainly is not the legislative intent.

140. Thus, in our view, reading of Section 11-A of the Land Acquisition Act into Chapter VII of the MRTP Act will render the substantive provisions of the State Act ineffective, unworkable and may frustrate the object of the Act materially.

25. In view of the aforesaid finding of this Court, we hold that the Nagpur Improvement Trust Act, 1966 is complete code by itself except for the provisions of the Land Acquisition Act, 1894 which stood legislatively incorporated in the State Act. The subsequent amendments to the Land Acquisition Act including amendment made vide Act 68 of 1984 inserting Section 11A would have no effect on the acquisition made or to be made under the Nagpur Improvement Trust Act, 1966.

26. As regards to the second limb of issue, we find ourselves entirely in agreement with the submission that in absence of a statutory provision, review application

cannot be entertained. Even in garb of clarification, earlier order cannot be modified or corrected. (See *Kalabharati Advertising v. Hemant Vimalnath Narichania and Ors.* MANU/SC/0674/2010 : (2010) 9 SCC 437).

27. In the present case, the Division Bench of the High Court by impugned judgment dated 28th August, 2000 made the following observation:

10. A perusal of the observation made by this Court in the above referred judgment, dated 8th July, 1984, undoubtedly makes it clear that the award was not set aside for want of any procedural illegality; however, the same was quashed only to the extent of the provisions, which are referred to hereinabove, came to be declared as ultra vires by the Apex Court, which undoubtedly deals with the aspect of compensation only.

13. In view of the facts and circumstances of the present case, in our opinion, the provisions of Section 11(A) of the Land Acquisition Act are not attracted since the award was already made prior to Section 11(A) came into existence in the year 1984. The contention of the learned Counsel for the Petitioner, in this regard, cannot be accepted and must fail.

28. In view of such finding, it is not necessary to decide the question as to whether the Collector has power of review as on merit itself, we find no ground to interfere with the order passed by the High Court.

29. Learned Counsel for the Appellant made an alternative prayer by filing I.A. No. 9 of 2008 to consider the Appellant's entitlement to the benefit of Government Resolution dated 17th January, 1992 but learned Counsel for the Respondents pointed out that such relief has already been claimed by the Appellant by filing a writ petition before the High Court which has been dismissed by the High Court on 12th October, 2001. Therefore, no such relief can be granted in the present appeal.

30. After judgment was reserved, the Appellant has filed another I.A. Nos. 13-14/2014 stating that "the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act" has come into force from

1st January, 2014 but we are not inclined to decide such issue which was not raised before the High Court or this Court.

31. For the reasons aforesaid, the interlocutory applications are rejected and the appeals are dismissed. There shall be no order as to costs.