MADHYA PRADESH HIGH COURT

Beni Prasad Tandan

Vs.

Jabalpur Improvement Trust

Misc. Petn. No. 316 of 1966
(Bishambhar Dayal, C.J. and K.L. Pandey, J.)

16.01.1970

JUDGMENT

Pandey, J.

1. This order shall dispose of Miscellaneous Petition No. 357 of 1966 also. Both these petitions are directed against-

(i) Development Scheme No. 5 framed by the Jabalpur Improvement Trust (respondent 1) and sanctioned and announced by the State Government (respondent 3) under the provisions of the M. P. Town Improvement Trusts Act, 1960 (hereinafter called the Act);
(ii) sanction accorded to that Scheme by the State Government and announced by a notification dated January 18, 1965, issued under Section 52 (1) of the Act and further sanction given by an order dated September 14, 1965, passed under Section 70 of the Act to acquisition of the land needed for the Scheme; and
(iii) all orders passed and notices issued thereafter in regard to the Scheme, acquisition of land there for and delivery of possession of such land.

The petitioners have further asked for a writ of mandamus to restrain the respondents from giving effect to the aforesaid Scheme.

2. The broad facts that gave rise to these petitioners may be shortly stated. The respondent 1 framed Development Scheme No. 5 for shifting the existing whole-sale grain market and Dal and Oil Mills and other like industries situated in crowded localities in the city of Jabalpur to a new site outside the thickly inhabited area, for establishing there other whole-sale and retail markets and also for development thereof

residential plots suitable for workers in the aforesaid markets and industries. The Scheme provides for acquisition of 59.59 acres of land out of Khasra No. 204, area 88 acres, of Madhotal belonging to the petitioners, which, it is not now disputed, is situated within the limits of Municipal Corporation, Jabalpur. Similarly, the Scheme provides tor acquisition of 131.29 acres of land out of 161.08 acres belonging to the petitioners in the other petition, as detailed in Annexure A thereto. All this land too is situated within the limits of the Municipal Corporation, Jabalpur. The notification relating to the Scheme was duly published in the M. P. Rajpatra and also in a local paper as required by Section 46 (2) of the Act. The petitioners in the two cases raised several objections which were, however, rejected and then the State Government issued the aforesaid notification under Section 52 (1) of the Act and passed the impugned order under Section 70 of the Act. Thereafter, notices were issued under Section 71 (3) of the Act requiring the petitioners to deliver possession of the lands. They raised objections and also requested that their lands be released but the respondent No. 1 did not accede to their request. It was, thereafter, that the petitioners in the two cases filed these petitions.

3. The Improvement Scheme No. 5 and the action taken there for have been challenged in the two petitions inter alia on the following grounds:

> (i) The Municipal Corporation, Jabalpur, is the authority empowered to regulate markets, including the wholesale grain market, within the limits of the Corporation. Further such a market can be established and regulated under the provisions of the Agricultural Produce Markets Act, 1960. That being so, the respondent I could not undertake, or be allowed to usurp, the functions of those authorities and the action taken by it is, therefore, illegal.
> (ii) Acquisition of land for such a purpose is not a public purpose within the meaning of Article 31 (2) of the Constitution.
> (iii) The Scheme, as framed, is not an improvement scheme specified in Section 31 of the Act. It is not covered by Sections 37 and 39 of that Act.

4. Other grounds raised relate to matters of procedure. According to the petitioners, the notices published under Section 40 of the Act were not in accordance with the requirements of that section. Further, while no notice under Section 48 (1) of the Act was given to one set of petitioners (M. P. No. 357 of 1966), those served on others were not issued within the prescribed time. Moreover, a reasonable opportunity of

being heard as contemplated by Section 50 of the Act was also not afforded. Finally, before sanction for acquisition was accorded by the State Government, individual notices under Section 68 (1) of the Act were not sent in one case [M. P. No. 357 of 1966] and no enquiry was made and no opportunity was given to the petitioners to make any representation.

5. The respondents 1 and 2 and the State Government filed separate returns, denied that there were any material irregularities in procedure, traversed all other adverse allegations made in the two petitions and contested the claims of the petitioners to the reliefs sought by them.

6. We have heard the counsel at some length and reached the conclusion that these petitions must be dismissed. In our opinion, Section 52 (2) of the Act is a complete answer to the procedural irregularities and relieves us of the duty to consider whether the respondent I committed any irregularities which affected the validity of the manner in which the Scheme was framed or sanctioned. As we have already indicated, the State Government had sanctioned the Scheme and announced it by a notification published under Section 52 (1) of the Act. Sub-section (2) of that Section reads:

> "(2) The publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned." A somewhat similar provision was made in Section 67 (8) of the C. P. and Berar Municipalities Act, 1922 which read as follows:
> "(8) A notification of the imposition of a tax under this section shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act." This Court and the Supreme Court considered the meaning and effect of the expression "conclusive evidence". In *Municipal Committee, Khandwa v. Radhakisan Jaikisan,*[1] it was held that the expression 'conclusive evidence' implied that the publication of the notification dispensed with all corroborative evidence of imposition of the tax in accordance with the provisions of the Act and forbade consideration of all contra-indicating evidence. In *Onkarsa Tukaram v. Municipal Committee, Nandura,* [2] a Division Bench of this Court stated that the notification served to validate the entire proceeding relating to the imposition of the tax and precluded any objection to its regularity or legality. Finally, in *Berar Swadeshi Vanaspathi v. Municipal Committee, Shegaon,* [3] it was stated:"This notification, therefore, clearly is one

which directs imposition of octroi and falls within sub-section (7) of Section 67 and, having been notified in the Gazette, it is conclusive evidence of the tax having been imposed in accordance with the provisions of the Act 'and it cannot be challenged on the ground that all the necessary steps had not been taken,' (underlined (here in ') by us)

7. In Punjab Development and Damaged Areas Act, 1951, sub-sections (3) and (4) of Section 5 provided as follows:

> "(3) The State Government shall then notify the scheme, either in original or as modified by it and the scheme so published shall be deemed to be the sanctioned scheme.
> (4) The publication under sub-section (3) shall be conclusive evidence that a scheme has been duly framed and sanctioned." The Supreme Court considered the meaning and effect of these provisions in *Trust Mai Lachmi Sialkoti Bradari v. Chairman, Amritsar Improvement Trust,* [4] and observed:
> "The conclusive effect postulated by Section 5 (4) can only be in regard to the formalities prescribed by Sections 3, 4 and 5 and does not touch a case where there is complete lack of jurisdiction in the authorities to frame a scheme." (Page 980)

However, a somewhat different opinion was expressed in *Raza Buland Sugar Co. Ltd., Rampur v. The Municipal Board, Rampur,* [5] In that case, their Lordships were considering the effect of Section 135 (3) of the Uttar Pradesh Municipalities Act, 1916, which provided as follows:

> 'A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act."

It was observed by Wanchoo, J., who spoke for the majority, that the aforesaid provisions would not preclude an attack on the validity of imposition of any tax if there was no compliance with the mandatory provisions of the procedure for imposition of such tax. But, in *Municipal Board, Hapur v. Raghuvendra Kripal, AIR 1966 Supreme Court 693, the view taken in AIR 1962 Supreme Court 420* (supra) was reaffirmed. The passage from the judgment delivered in that case, which we have

reproduced above, was recalled and it was held that the protection of Section 135 (3) would be available against the defects in procedure. Hidayatullah, J., who had recorded a dissenting opinion in AIR 1965 Supreme Court 895 (supra) observed:

> "As observed already some of the provisions controlling the imposition of a tax must be fully complied with because they are vital and therefore mandatory, and the others may be complied with substantially but not literally, because they are directory. In either case the agency for seeing to this compliance is the State Government. It is hardly to be expected that the State Government would not do its duty or that it would allow breaches of the provision to go uncertified. One can hardly imagine that an omission to comply with the fundamental provisions would ever be condoned. The law reports show that even before the addition of the provision making the notification conclusive evidence of the proper imposition of the tax, complaints brought before the Courts concerned provisions dealing with publicity or requiring ministerial fulfillment. Even in the two earlier cases which reached this Court and also the present case, the complaint is of a breach of one of the provisions which can only be regarded as directory. In cases of minor departures from the letter of the law especially in matters not fundamental, it is for the Government to see whether there has been substantial or reasonable compliance. Once Government condones the departure, the decision of Government is rightly made final by making the notification conclusive evidence of the compliance with the requirements of the Act. It is not necessary to investigate whether a complete lack of observance of the provisions would be afforded the same protection. It is most unlikely that this would ever happen and before we pronounce our opinion we should like to see such a case."

We may add that the defects in procedure put forward in these petitions are not of mandatory character. Therefore, even if there were those defects - and their existence has in fact been disputed in the returns - the protection of Section 52 (2) would be available against them and it must accordingly be held that the Scheme was framed and sanctioned in accordance with the provisions of the Act

8. Another defect alleged to exist is that no notice of the intention of the respondent 1 to acquire the lands was given to individual owners. The short answer to this is that Section 68 of the Act does not contemplate such notices and, therefore, no objection

can be taken on that ground. It is not claimed that notices in accordance with Section 68 (1) were not issued. That being so, if some of the petitioners did not raise any objection or avail of the opportunity of being heard so afforded to them, they cannot legitimately make a grievance that the requirements of that section were not fulfilled. In this connection, we may mention the fact that the petitioners in this case [M. P. No. 316 of 1966] had utilized that opportunity, though their objections were rejected.

9. It is next argued that, before according sanction for acquisition of the lands, the State Government did not make any enquiry as contemplated by Section 70 of the Act to satisfy itself that the acquisition was in public interest. Moreover, being the ultimate or final authority to sanction the acquisition, it was obliged to afford to the petitioners an opportunity of being heard. In our opinion, there is no substance in this contention. Under Section 70 of the Act, it is open to the State Government, if it so thinks fit, to make an enquiry, but it is not obliged to do so. The reason is this. Under Section 68 of the Act, the Improvement Trust gives a public notice of its intention to acquire land for purpose of any scheme, invites objections, gives an opportunity of being heard and then takes decisions on the objections, if any. Thereafter, when applying to the State Government under Section 69 of the Act for sanction of the proposed acquisition, it is required to send the record of the aforesaid proceedings, a report containing a summary of the objections and its decisions thereon and the following information:

(i) the names of the owner and occupier of the land;
(ii) full description of the land and of any structure thereon;
(iii) the purpose for which the land is required;
(iv) such other particulars as may be prescribed.

It would thus appear that the procedure prescribed by Sections 68, 69 and 70 of the Act is substantially similar to the one envisaged by Sections 4, 5A and 6 of the Land Acquisition Act, 1894. As we have indicated in the foregoing paragraph that procedure was followed in this case. That being so, the sanction accorded by the State Government in this case cannot be assailed on the ground that it did exercise its discretionary power of further making under Section 70 of the Act "such enquiry as it may deem necessary".

10. This takes us to the three main grounds urged in support of these petitions. The first of these grounds is that the Improvement Trust could not be permitted to usurp

the functions of the market committee under the M. P. Agricultural Produce Markets Act, 1960 and the Municipal Corporation functioning under the M. P. Municipal Corporations Act, 1956. Quite apart from the consideration that the objects of the M. P. Agricultural Produce Markets Act, 1960 are different from, and not in conflict with, those of the Act, there was, at the material time, no market committee constituted and incorporated under Section 12 of the former Act that could undertake this work. Further, although the Municipal Corporation functioning under the M. P. Municipal Corporations Act, 1956 may be entitled to acquire, or cause to be acquired, land for purposes of that Act, the scope of town planning under Chapter XXIII thereof is very limited and, what is more, it is not exclusive. Section 292 of that Act enacts that where a town planning scheme has been sanctioned under the Town Improvement Act, the Municipal Corporation shall not make or undertake it.

11. The second ground is that acquisition of land for purposes of Development Scheme No. 5 is not a public purpose within the meaning of Article 31 (2) of the Constitution. The necessity for framing and proceeding to implement this scheme arose on account of congestion, insanitation and health hazards created by the existence of the wholesale grain market and Dal and Oil Mills in thickly populated localities of the city of Jabalpur. So, in their return, the respondents 1 and 2 stated as follows:

> "The whole-sale grain market and Dal and Oil Mills in Niwarganj and Miloniganj are situated in a very congested thickly populated locality causing nuisance and insanitary conditions in the locality with consequent hazard to public health of the persons residing in the locality." [Paragraph 12 (a)]

In regard to the area vacated by the removal of whole-sale grain market and Dal and Oil Mills, another Scheme was envisaged. So it was stated:

> "After the whole-sale markets, Dal and Oil Mills are removed, the area vacated by them would be developed with a view to make the localities good and safe residential areas with modern amenities like broad roads, parks, underground sewers, good water supply etc. For this purpose a separate scheme would be prepared."

We accept the factual position, which has not been challenged before us.

12. The expression "public purpose" occurring in Article 31 (2) of the Constitution has no inflexible or rigid connotation ensuring for all times. It has been recognized to be elastic in concept, taking color from the statute in which it occurs and varying in meaning with the time and state of society in which it is required to be considered. The scheme in this case has been framed under the M. P. Town Improvement Trust Act, 1960, which, as the preamble shows, was enacted for the purpose of making and executing town improvement schemes in certain towns of the State. In our opinion it would be idle to think of making any improvement in a town unless the authority concerned is empowered to remove from thickly populated localities causes of congestion, particularly when they bring about nuisance, insanitary conditions and health hazards. We are also of the view that the rehabilitation of persons thus displaced is also an essential part of any reasonable town improvement scheme. It is not necessary that the entire community or even a considerable portion thereof should directly enjoy, or participate in the enjoyment of, the improvement. It is enough if the object advances the general interest of the community. It may be that, in execution of the scheme, certain individuals incidentally derive benefit but so long as they do so not as individuals but in furtherance of the object of public utility, the scheme is not assailable as unsupported by public purpose, that is to say, general interest of the community. Regarded in the light of these considerations, we are clearly of opinion that the scheme, which provides for rehabilitation of persons required to be displaced from a thickly populated area in Jabalpur city for the reason that it is necessary to remove there from congestion and the resulting nuisance, insanitary conditions and health hazards, is in the general interest of the community. That being so, acquisition of the land needed for the purpose is for a public purpose.

13. The last ground, and the one which was tenaciously pressed before us, is that the Scheme is not a development scheme as contemplated by Section 37 of the Act nor is it one which can be regarded as a housing accommodation scheme under Section 38 of the Act or a town expansion scheme under Section 39 thereof. The submission is that the action taken should, therefore, be held to be unauthorized and illegal. We are unable to accept this contention also. Section 31 of the Act, which enumerates various types of schemes that can be undertaken under the Act, reads:

> "31. Types of improvement schemes. - An improvement scheme shall be of one of the following types or may combine any two or more of such types or of any

special features thereof, that is to say -
(a) a general improvement scheme;
(b) a re-building scheme;
(c) a re-housing scheme;
(d) a street scheme;
(e) a deferred street scheme;
(f) a development scheme;
(g) a housing accommodation scheme;
(h) a town expansion scheme;
(i) a drainage or drainage including sewage disposal scheme; and
(j) a playground, stadium and recreation ground scheme."

From the plain language of this section it is clear that any scheme undertaken by an Improvement Trust need not be a one-type pure scheme excluding all or any of the features of any other type. In any such scheme, it is permissible to combine any two or more of such types or any special features thereof. That being so, the scheme in this case cannot be condemned as unsanctioned by the Act only because it does not rigidly conform to the development schemes as provided by Section 37 or to any other one-type scheme. The respondents 1 and 2 denied that the scheme in this case is a Town Expansion Scheme as contemplated by Section 39 (paragraph 12 (b)). We would, therefore, leave that non-descript scheme out of account. Since housing is not necessarily confined to making provision for residential buildings and is wide enough to include within its ambit the making of provision for any building required for carrying on any business or industry, we are of opinion that, though the scheme here has been misdescribed as a development scheme, it is really a combination of two types described in Sections 34 and 38 of the Act. Those sections provide –

"34. Re-housing scheme. - The Trust may frame a re-housing scheme for the construction, maintenance and management of such and so many dwellings and shops as it may consider ought to be provided for persons who -
(a) are displaced by the execution of any improvement scheme sanctioned under this Act; or
(b) are likely to be displaced by the execution of any improvement scheme which it is intended to frame or to submit to the State Government for sanction under this Act.
38. Housing accommodation scheme - Whenever the Trust is of opinion that it

is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants within the Trust area, the Trust may frame a housing accommodation scheme for such purpose." In this case, while Section 34 would cover dwellings and shops for persons likely to be displaced, Section 38 would cover other accommodation needed for the following classes, namely whole-sale grain dealers and owners of Dal and Oil Mills. Residential accommodation for workers in the whole-sale markets and the aforesaid two industries would also be covered by Section 38. Our attention has, however, been drawn to Municipal Corporation of the *City of Jabalpur v. Kishan Lal,* [6] . That was a case where, under the relevant enactment, the power of the Corporation was restricted to providing "for the construction of buildings for the accommodation of the poorer and working class" but the Corporation proceeded to acquire land to develop plots and then to sell those plots, or to sell the plots with buildings constructed on it, to the public. The action taken was struck down as incompetent by this Court. That view was affirmed by the Supreme Court when the case came up before it in appeal by special leave. But the action taken in this case is, as shown, well within the powers conferred by the widely worded provisions of the Act. It is hardly necessary to add that those powers do not cease to be available for defending the action though purportedly taken under a wrong section or a mistaken label. (*P. Balakotaiah v. Union of India,* [7] *Afzal Ullah v. State of Uttar Pradesh,* [8]

14. The result is that these petitions fail and are dismissed. The petitioners in each case shall bear their own costs and pay out of the security amount those incurred by the respondents 1, 2 and 3. There shall be two sets of costs, one for the respondents 1 and 2 and another for the respondent 3. The remaining amount of security, if any, shall be refunded. Hearing fee Rs. 100/-.

Petitions dismissed.

Cases Referred.

1. AIR 1930 Nag157
2. AIR 1910 Nag 293
3. AIR 1962 SC 420
4. AIR 1963 SC 976

5. AIR 1965 SC 895
6. AIR 1966 SC 207
7. AIR 1958 SC 232
8. AIR 1964 SC 264