BOMBEY HIGH COURT

Industrial Development and Investment Co. Pvt. Ltd

Vs.

State, (Bombay

Appeal No.120 of 1988 (in W.P. No. 1683 of 193)

(C. Mookerjee, C.J. and S.P. Bharucha, J.)

14.07.1988

JUDGEMENT

Mookerjee, C.J.

1. Appellant 1 had been a tenant in respect of an area measuring 20,397 square yards forming part of City Survey No. 503, Dharavi, under the Provident Investment Company Ltd., Respondent 5. The learned single Judge had dismissed the appellants' writ petition, inter alia, on the ground of delay in coming to the Court, in spite of the finding that proceedings for acquisition of the said plot No. 503 had become invalid by happening of the event hereinafter mentioned. Hence this appeal before us.

2. On 7th February 1967 a development plan prepared under the Maharashtra Regional and Town Planning Act, 1966, was finalized. Under the said plan, the Cadastral Survey Plot No. 503 was reserved for extension of Dharavi Sewerage Purification Works. On September 6, 1972, in exercise of the powers conferred by Sub-section (4) read with Sub-section (2) of Section 126, Maharashtra Regional and Town Planning Act, 1966 read with Section 6 Land Acquisition Act, 1894, the Government of Maharashtra made a declaration to the above effect that the Cadastral Survey Plot No. 503 was required for extension of Dharavi Sewarage Purification Works. The declaration recited, inter alia, that the Municipal Corporation of Greater Bombay had made an application to the State Government for acquisition of the said land reserving in the development plan the said Survey Plot No. 503 for the aforesaid specified purpose. On 14th March 1973 notice under Section 9, Land Acquisition Act had been served upon the Appellants-petitioners inviting claims for compensation. Pursuant to the said notice, a number of persons including the appellants had lodged claims for compensation for the proposed acquisition of Survey Plot No. 503. Upon inquiry made in the course of hearing of this appeal, we were informed by the Counsel appearing on behalf of the State that in the year 1979 the claimants had been heard by the Land Acquisition Officer. It is not the case of the respondents that any further hearing was

given in the said land acquisition proceedings to the Appellant or other persons interested in the compensation for acquisition of the said plot. On 24th February 1983 respondent 2 made an award determining the compensation payable for the acquisition of the said Survey Plot No. 503. Out of the total award of Rs. 8,72,803.30p., respondent 2 as the landlord was awarded Rs. 6,24,066/-, while the State was awarded Rs. 2,45,109.30 p. The present appellants were awarded a sum of Rs. 3,278/- as compensation in respect of their alleged interest in the Survey Plot No. 503. We understand that on 7th April 1983 the appellants made an application under Section 18, Land Acquisition Act, 1894, for reference to Court. The case of the appellants was that on 26th May 1983 a public notice in the Times of India had appeared in respect of the proposed revision of the development plan for Bandra-Kurla Complex. Thereupon the appellants had started making inquiries and had allegedly discovered in June 1983 that the specified public purpose, viz., extension of Dharavi Purification Plant set out in the notification under Section 6, Land Acquisition Act, in respect of Plot No. 503 had been abandoned and reservation had been changed in the year 1979. On 9th April 1979 the Government of Maharashtra had sanctioned modified proposals for BandraKurla Complex prepared by the Special Planning Authority, respondent 4, inter alia, by deleting the reservation of the Survey Plot No. 503 made in the original development plan finalized on 7th February 1967. The proposal sanctioned by the State Government on 9th April 1979 was, inter alia, to the effect that the Sewerage Purification Plant at Sion would be discontinued and the same was now proposed to be located in Block A. The Block H in which the Survey Plot No. 503 was included had been reserved for residential, commercial and semi-commercial use. On 4th July 1983 the present appellants filed the writ petition which, as stated already, has been dismissed by the learned single Judge.

3. Before we consider the merits of this appeal, we may record that undisputedly by reason of the planning proposals included in the modified development plan, the Survey Plot No. 503 is no longer to be used for the purpose of extension of Dharavi Sewerage Purification Plant which was specified in the notification issued under Section 126(4), Maharashtra Regional and Town Planning Act read with Section 6 Land Acquisition Act. In other words, the particular public purpose for which the declaration under Section 6, Land Acquisition Act had been made has ceased to exist. Although the learned single Judge has dismissed the writ petition, he has recorded a finding that the appellants-petitioners were right when they contended that the original purpose for which the Survey Plot No.503 was to be acquired could not and in fact did not exist in view of the 1979 plan. In the affidavits filed on behalf of the respondents in the trial Court several inconsistent and contradictory stands were taken on behalf of the respondents regarding the proposed future use of the Survey Plot No. 503. In his affidavit dated 31st August 1983, T.N. Shaldar, Assistant Engineer of respondent 3, had, inter alia, averred that the land acquired for Dharavi Purification Works would be used for the purpose of housing the employees of the Dharavi Purification Works as it was falling in a residential zone, vide para 3. In para 6 of the same affidavit the deponent reiterated that user for housing the employees of Dharavi Purification Works would be also a public purpose. In para 5 of the affidavit affirmed by A.P. Carneiro on behalf of respondent 3, a slightly different stand was taken. It was claimed that

respondent 3 proposed to use the land for the staff quarters of the existing Purification Works or for housing the persons who were dishoused and who were tenants of the Corporation. In the same breath the deponent had stated that these proposals were not yet finalized, inasmuch as the revision of the development plan was tentative. The Special Land Acquisition Officer in para 15 of his affidavit affirmed in September 1983 had contended that the change of the proposed use of the Survey Plot No.503 had no effect on the earlier notification issued on 6th September 1972. It is unnecessary to lengthen our judgment by referring to the several other affidavits filed on behalf of the respondents wherein also inconsistent stands have been taken by the respondents regarding the proposal for user of the Survey Plot No. 503 after it has ceased to be reserved for the purpose of extension of Dharavi Purification Plant. We may only refer to the extracts from the proceedings of the meeting of the Works Committee of the Municipal Corporation held on 10th January 1986. In reply to a question put by a member of the Committee, the Deputy Municipal Commissioner had *inter alia* replied that there was no proposal for extension or expansion of the existing Sewerage Purification Plant at Dharavi. We may also state that in the planning proposals for Bandra-Kurla Complex provision has been made both for erection of the plant and for residential quarters in Block A. Therefore, in view of the stand taken by the respondents themselves and the statements made in the affidavits, we accept the contention of the appellants that the Survey Plot No. 503 is proposed to be no longer used for extension of the existing Purification Plant.

4. Before us no serious effort was made on behalf of the respondents to dispute the proposition that the public purpose specified in the declaration under Section 6, Land Acquisition Act, must continue to subsist throughout the proceedings and at least up to the date of making of the award under Section 11 Land Acquisition Act. In our view, the Appellants are right in contending that the public purpose specified in a declaration under Section 6, Land Acquisition Act not only must be real and not illusory at the date the said declaration is published but the purpose must continue to subsist until the land proposed to be acquired vests in the State in terms of Section 16 or 17 Land Acquisition Act as the case might be. In the event the purpose specified in the declaration under Section 6 is altered or it ceases to exist, there would be no further jurisdiction to continue the proceedings for acquiring for such a non-existent purpose. Assuming that the purposes mentioned in the affidavits filed on behalf of the respondents in this Court are also within the ambit of the expression "public purpose", the said purposes were distinct and different from the purpose mentioned in the declaration under Section 6, Land Acquisition Act in respect of Survey No. 503, Dharavi and, therefore, it will be a case of acquisition for a purpose not mentioned in the declaration under Section 6. Mr. Dhanuka, learned Counsel for the appellants, has placed before us several reported decisions which have considered this legal proposition. A Division Bench of the Delhi High Court in *Union of India v. Nand Kishore*[1]*, inter alia* held that the Government has no right to change the public purpose in midstream. The Government cannot change the original public purpose till the acquisition is complete. After the land has vested in it, the Government has a right to change the use to which it will put the land. Until the acquisition is completed the Government must adhere to the original purpose. If they want to depart from the

original purpose, the only course is to start fresh acquisition proceedings. The learned Judges of the Delhi High Court had referred to several reported decisions including the decisions in the cases of *Gadadhar v. State of West Bengal*[2], and *Suresh Verma v. State of Punjab*[3], We are in entire agreement with the above observations of the Delhi High Court. We are unable to accept the contention that the discontinuance or disappearance of the purpose for which the plot had been reserved in the declaration under Section 6 Land Acquisition Act had made the further proceedings merely voidable and not void. An award under Section 11, Land Acquisition Act, is a consequential proceeding to the making of a valid declaration under Section 6 of the said Act. Therefore, existence of a declaration under Section 6 is a condition precedent to making of an award of taking possession. When a declaration under Section 6, Land Acquisition Act, ceases to be valid, neither an award

[1] AIR 1982 Del 462
[2] AIR 1963 Cal 565
[3] AIR 1971 Pun and Hary 406

under Section 11 of the Act can be lawfully made nor can possession of the plot mentioned in the declaration under Section 6 be validly taken under Section 16 of the Act. In such a case, taking of possession is not authorised by law. The same cannot result in vesting of the land in the State free from encumbrance. The learned single Judge, however, was not very wrong when he observed that the acquisition proceedings cannot be adjudged in the facts of this case to be void ab initio. At the date the declaration under Section 6, Land Acquisition Act read with Section 126, Maharashtra Regional and Town Planning Act, had been made, there was no apparent infirmity or lacuna, inasmuch as at that point of time no decision had been taken as yet to discontinue the use of the Survey Plot No. 503 for extension of Dharavi Sewerage Plant. We have already mentioned that on 9th April 1979 the Government of Maharashtra had sanctioned the proposal to modify the development plan for Bandra-Kurla Complex, inter alia, by discontinuing the reservation made in the original development plan in respect of Survey Plot No. 503 and by shifting the location of the Purification Plant to Block A. Even if at the time of the making of the declaration under Section 6 there was no lack of authority to proceed with the acquisition of the plot, as soon as the State Government had approved the proposal to modify the development plan, the purpose for which the Survey Plot No. 503 had been reserved and specified in the declaration under Section 6, Land Acquisition Act, ceased to subsist. In other words, the proposal for extension of the Sewerage Plant to Survey Plot No. 503 became non-existent. In the result, all subsequent proceedings including the proceedings for making of the award under Section 11 Land Acquisition Act, and for taking possession of the land in question became invalid. The Land Acquisition Officer had further jurisdiction to make his award and to take possession in terms of Section 16, Land Acquisition Act. Only in the event the declaration under Section 6 Land Acquisition Act, continued to be valid and operative, he had authority to perform these acts. The precondition for making an award or for taking possession of the land in question was the continued existence of a valid declaration under Section 6 of the Act. We cannot also give any countenance to the contention that the infirmity in question merely made the further land acquisition proceedings irregular and voidable. For the reasons already mentioned,

the declaration under Section 6, Land Acquisition Act, having been non est, the authority of the Land Acquisition Officer to continue the proceedings no longer survived. It was a question of not mere exercise of power in an irregular manner or mere error in process. By reason of the declaration under Section 6, Land Acquisition Act losing its legal force, the jurisdiction to proceed with the acquisition ceased and all further proceedings including making of the award and taking of possession would be void and without jurisdiction. The Act subsequent to the disappearance of the purpose specified in the declaration under Section 6 was *ultra vires* or beyond the jurisdiction and, therefore, invalid and not merely voidable.

5. In our view, the writ petition was not liable to fail on the ground of delay. We have already mentioned that there was nothing on record to indicate that after the appellants had filed their claims pursuant to the notice under Section 9, Land Acquisition Act, served upon them in the year 1973, any intimation or notice was actually served by the respondents upon the appellants bringing to their knowledge that there had been modification of the development plan. Secondly, the award proceedings were allowed to be kept pending from the year 1973 till 24th February 1983. Even assuming that the respondents are right in imputing knowledge to the appellants of the gazette notification published on 9th April 1979, there is nothing to show that the respondents had manifested any intention to further proceed with the land acquisition proceedings pursuant to the declaration under Section 6 dated 6th September 1972 in spite of alteration of the purpose specified in the said declaration under Section 6. In the event the respondents had at any earlier point of time conveyed to the appellants their intention to proceed with the land acquisition proceedings in spite of the change in the purpose of acquisition, the appellants could have approached this Court earlier than they did. Therefore, we are unable to subscribe to the view that there was undue delay in filing the writ petition or that the cause of action occurred in the year 1979. The decisions cited on behalf of the respondents do not in fact assist the case of the respondents. These decisions lay down that each case must depend upon its own facts, vide *Girdharan Prasad Missir v. State of Bihar*[4],. In the instant case, we have said that the Court in deciding the question whether the writ petition was a stale one may not proceed on the basis of the imputed knowledge but ought to consider whether the appellants were aware of the true facts and secondly whether there had been any lack of diligence on their part. The Court may also legitimately take into consideration whether by reason of lapse of time any equity had arisen in favour either of the respondents or third parties which ought not to be disturbed. In the instant case, by reason of the lapse of time between the year 1979 and the date of filing of the writ petition, no vested right had accrued in favour either of the respondents or of third parties. The respondents are bound to act in accordance with law and by merely pleading delay they cannot act without jurisdiction and acquire the plot for a purpose not specified in the declaration under Section 6, Land Acquisition Act. The award was made in favour of the parties who are all respondents before us. The State itself which has acted illegally and without jurisdiction cannot plead that it should be allowed to retain the sum awarded in its favour by the Land Acquisition Officer. Respondent 5 who is described as the owner of the land has conveyed to us that it would submit to the order of the Court. We also record the submission of Mr. Dhanuka, learned Counsel

for the appellants, that in the event the other awardees who were awarded paltry sums by the award under Section 11 Land Acquisition Act, do not refund sums withdrawn, the appellants are prepared to refund and/or deposit the said sums. Therefore, we conclude that on the ground of delay the appellants could not be deprived of the relief to which they were otherwise entitled.

6. There is no substance in the submission made on behalf of the respondents that in view of the taking of possession and vesting of the interest of respondent 5 in terms of Section 16, Land Acquisition Act, the appellants are not entitled to maintain the writ petition. In the first place, there is nothing on record to show that possession under Section 16 was taken from the appellants who, according to the award under Section 11, were tenants of the land and had erected certain structures and for which they were awarded compensation. We have also pointed out that the pre-condition for making an award under Section 11 and for taking possession under Section 16 of the Act is existence of a valid declaration under Section 6, Land Acquisition Act. In view of our finding that the said declaration under Section 6, Land Acquisition Act had ceased to be valid, the taking of possession must be also considered to be without lawful authority. Taking of illegal possession cannot have the effect of divesting the right of the appellants in the land in question or to maintain the writ petition. It is unnecessary for us to pursue the question

[4](1980) (2) SCC 83

whether in the instant case Section 91, Bombay Municipal Corporation Act, has any application or not.

7. We also reject the argument that the appellants-petitioners' interest having been extinguished, they were not entitled to any relief under Article 226 of the Constitution. The reported decisions upon which the respondents have placed reliance have no application to the facts of this case, inasmuch as in these cases the validity of the declaration under Section 6 was not questioned. In fact in the case reported in *Uma Shankar v. State*[5], the petitioner had become a tenant long after Section 6 declaration had been made. The learned Counsel for respondent 3 contended that if the land acquisition proceedings are now declared illegal and the award is set aside, serious prejudice would be caused to respondent 3. The grounds asserted to substantiate the said claim of prejudice were totally untenable. Making of an award after Section 6 declaration had already ceased to be legal and valid cannot be advanced as a ground in support of such prejudice. For the same reason, possession taken or deposit of compensation were acts which were irrelevant for deciding whether prejudice would be caused if the illegal proceedings are not allowed to be further proceeded with. On the other hand, both the State Government and the Municipal authorities must be considered to be fully aware of the proposals for modifications in the development plan, while steps were being taken by them in the proceedings under Section 11, Land Acquisition Act. It is curious that in spite of having notified the said plan proposals in the year 1979, neither the State Government nor the Municipal authorities had apparently brought to the notice of the Land Acquisition Officer that the purpose for which the land had been reserved in the declaration under Section 6, Land Acquisition Act, had been altered. Therefore, having proceeded illegally with the land acquisition case, the respondents cannot contend that prejudice would be caused to

them.

8. We also find without any substance the contention that it was for the appellants to bring to the notice of the Land Acquisition Officer the modifications in the development plan. In fact it was the duty of the respondents and not of the appellants to take notice of the said facts and to take steps in accordance with law.

9. For the foregoing reasons, we allow this appeal. We declare that the notification dated 6th September 1972 under Section 6, Land Acquisition Act, read with Section 126(2) and (4), Maharashtra Regional and Town Planning Act, has become inoperative and the land in question cannot be acquired in pursuance of the said declaration under Section 6, Land Acquisition Act. We set aside and cancel the award under Section 11, Land Acquisition Act, and also all steps taken for possession and vesting of the plot in furtherance of the said award. There will be no order as to costs.

10. The order dated 3rd February 1988 passed by the Union Bench in respect of the Bank guarantee and undertakings will continue for eight weeks. After the expiry of this period, the bank guarantee furnished by the appellants shall stand discharged.

Appeal allowed.

[5] AIR 1978 All 194