

Kerala State Housing Bd vs Ramapriya Hotels on 28 July, 1994

Equivalent citations: 1994 SCC (5) 672, JT 1994 (5) 113

Author: K. Ramaswamy

Bench: K. Ramaswamy, N Venkatachala

PETITIONER:
KERALA STATE HOUSING BD.

Vs.

RESPONDENT:
RAMAPRIYA HOTELS

DATE OF JUDGMENT 28/07/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1994 SCC (5) 672 JT 1994 (5) 113
1994 SCALE (3) 565

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. RAMASWAMY, J.- The two appeals arise from the same judgment, the first one by the Housing Board and the second by the State, respondents before the Kerala High Court in OP No. 704 of 1982 dated 26-7-1989. The respondent-company had entered into an agreement on 30-5-1977 agreeing that "first party (respondent-company) is satisfied of their own will that on a consideration of all relevant facts and circumstances and the prevailing conditions Rs 1100 (Rupees eleven hundred only) per cent including all improvements situated on this land will be a fair value and proper price for the property". "The first party will accept without protest on their behalf value-compensation at Rs 1100 (Rupees eleven hundred only) per cent inclusive of solatium and value for all structures and improvements on the property to be acquired

and referred to in the schedule hereunder", "will not dispute the declaration of compensation awarded". "Entering into this agreement as it will be for his own benefit and he stands to gain by the implementation of the said agreement." The second party (Land Acquisition Collector) "is empowered to make an award"

"at the rate of Rs II 00 (Rupees eleven hundred only) per cent inclusive of solatium and value for all structures and 'improvements in and upon the said land".

Pursuant thereto notification under Section 3(1) of the Kerala Land Acquisition Act, 1961 (Act 21 of 1962 for short "the Act") was published in the State Gazette acquiring 2.69.11 hectares in Survey Nos. 1759 part and 1127 parts in Trivandrum for the housing scheme envisaged by the appellants. Possession of the land was taken on 1-2-1978 but since declaration under Section 6 was not published within two years from the date of publication of Section 3(1) notification, on 12-6-1979 fresh notification under Section 3(1) was published. The respondents questioned the notification by filing a writ petition on 10-8-1979 which was disposed of on 13-10-1980 upholding the fresh notification. A declaration under Section 6 was published on 18-1-1981 and a notice under Section 9(3) to make the award was served on the respondents pursuant to which the respondents laid claim at Rs 30,000 per cent for compensation. The District Collector made an award on 21-8- 1981 at Rs 1100 per cent and on 19-9-1981 the respondents filed an application under Section 20 for reference to the civil court. Since the reference was not made writ petition OP No. 704 of 1982, came to be filed on 26-1-1982 which as stated earlier was allowed by the High Court under the impugned judgment.

2.The High Court found that the property under acquisition along with other properties, was hypothecated by equitable mortgage to Indian Bank, branch at Trivandrum, which as mortgagee was entitled to claim an interest in compensation payable to the mortgagor. Since the bank was not a party to the contract, no award under Section 16 of the Act could have been made. It also found that, by operation of the proviso to sub-section (1) of Section 16, since four years had elapsed from the date of the agreement, namely, 13-5- 1977, the award based on the agreement became void. However, to avoid delay since award had already been made, the High Court directed the Collector to refer the claim under Section 20 to the civil court without reference to the agreement which had become void. Accordingly the writ petition was allowed. Shri R.F. Nariman, the learned Senior Counsel for the Housing Board contended that the view of the High Court is clearly illegal. Section 16 contemplates execution of an agreement between the owner of the land and the Land Acquisition Officer to fix market value at the agreed rate which binds the parties. It is open to the respondents to waive the requirement of entering into a contract by all parties. Even otherwise the respondents had suppressed the fact of hypothecation to have executed an equitable mortgage of the property in favour of the Indian Bank claiming that respondent alone had exclusive title to the property, the respondent company is estopped to contend that under Section 16 no award can be made in the absence of the mortgagee as a party to the agreement. He also contended that "such date" referred to in proviso to Section 16(1), is referable to the date of the notification under Section 3(1). From the date of the second notification which came to be published after the execution of the contract, the period of four years would begin to run from the date of the second notification and the award having been made within four years from that date, the Collector was within his power to make the

award under Section 16 and the finding of the High Court that the award became void after the expiry of four years from the date of the agreement is clearly erroneous. In view of the agreement, no reference under Section 18 can be made to the civil court. Shri K.K. Venugopal, learned Senior Counsel for the respondents resisted the contentions.

3. The first question that arises for consideration is whether the phrase "all persons interested agree" in Section 16(1) required that each and every party having an interest in the compensation should necessarily be a party to the agreement. To appreciate whether this broad construction could alone subserve the legislative intent, should be considered in the light of the language in Section 16 and purpose it seeks to serve and its effects, require consideration. Section 16(1) reads thus:

"16. (1) If the Collector and all the persons interested agree, whether before or after the date of publication of the notification under subsection (1) of Section 3, as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same:

Provided that an agreement executed before the date of publication of the notification under sub-section (1) of Section 3 shall not be binding on the persons interested after the expiry of four years from such date.

(2) Such award shall be filed in the Collector's office and shall, subject to the proviso to sub-section (1), be conclusive evidence, as between the Government and all persons interested, of the value of the land and the amount of compensation allowed for the same."

4. A reading of sub-section (1) no doubt indicates that if the Collector and all the persons interested agree, whether before or after the date of publication of the notification under sub-section (1) of Section 3 as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same. It is stated in Maxwell on Interpretation of Statutes, 11th Edn., p. 321, that two or more words which are susceptible of analogous meaning are coupled together *noscitur a sociis*, they are to be understood as used in their cognate sense. They take, as it were, their color from each other, that is, the more general is restricted to a sense analogous to the less general. At pp. 334 and 335, it is further stated that the effect of the words of analogous meaning on each other and that of specific words on the more general one which closes the enumeration of them, as well as of their subordination to the more general principle gathering the intention from a review of the whole enactment and giving effect to its paramount object. At p. 338, it is stated that unless the contrary intention appears, in statutes passed after 1850, words importing the masculine gender include females, the singular includes the plural, and the plural the singular. In Craies on Statute Law, 7th Edn. at p. 177, it is stated that the words of limitation are not to be read into a statute, if it can be avoided. But in some cases a limitation may be put on the construction of the wide terms of a statute. At p. 178, it is stated that one of the safest guides to the construction of sweeping general words which it is difficult to apply in their full literal sense is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them. At p. 183, it is stated that the question whether, when the legislature has used general words in a statute, not following

particular or specific words, those words are to receive any (and, if so, what) limitation is one which may sometimes be answered by considering whether the intention of the legislature on this point can be gathered from other parts of the statute. At p. 184, it is stated that sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances, so that they have ever been guided by the intent of the legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to, reason and good discretion. The statute has to be construed according to the intent of the legislature. In *Maharashtra State Financial Corpn. v. Jaycee Drugs and Pharmaceuticals Pvt. Ltd.*¹, this Court held that it is settled rule of interpretation that statutory provisions should be construed in a manner which subserves the purpose of the enactment and does not defeat it and that no part thereof is rendered surplus or otiose. The object of Section 16 is that the Collector and the owner of the land should agree for payment of compensation to the land acquired after obtaining the approval of the valuation from the District Collector or the Board of Revenue, as the case may be, under Section 17 of the Act, with a view to make the award expeditiously and to avoid further litigation, protraction and prompt payment of compensation to the owner of the land. It is an enabling provision. The person or persons interested in the compensation would always be at liberty to agree by a contract with the Collector to make an award in terms thereof. It is true that Indian Bank, Trivandrum Branch was a mortgagee by deposit of title deeds by the respondent and economic it was not a party to the agreement. The object of Section 16(1) is to determine market value expeditiously and award compensation in terms of agreement to avoid needless delay. Therefore, in the light of the purpose and object of Section 16 all persons must be interpreted to mean not only in a plural but also singular which would include any one, if more than one person are interested in the compensation, to mutually enter into an agreement with the Collector. The agreement will bind the contracting parties alone and the award made under Section 16(1) may not thereby bind others. By its implication, absence of other persons who have similar interest in the compensation does not render the agreement executed by one among them void. Section 16 is a beneficial provision and it is always open to the parties to waive the mandatory provision of entering into the agreement by all the persons jointly with the Collector under Section 16(1). In *Dhirendra Nath Gorai & Subal Chandra Shaw v. Sudhir Chandra Ghosh*², this Court held that a party can waive mandatory procedure. Accordingly we hold that though Indian Bank as a mortgagee was interested in the compensation by operation of Section 73(2) of the Transfer of Property Act to realise the amount due to it from the mortgagor from the compensation payable from hypothecated lands under compulsory acquisition, its non-joinder as a party to the agreement does not 1 (1991) 2 SCC 637, 651 (para 16) 2 (1964) 6 SCR 1001 : AIR 1964 SC 1300 render the agreement void nor become unenforceable nor renders the jurisdiction of the Collector to make the award under Section 16(1) as illegal or void. May be, as stated earlier, neither the contract nor the award binds the non- party when it was entered into in an individual capacity by the contracting party. The finding of the High Court that no award could have been made in respect of respondent-company, therefore, is clearly erroneous and unsustainable. It is accordingly set aside. We are informed that the Indian Bank was paid of its debt and its request for reference under Section 18 was negated by the Collector, which became final.

5. The crucial question whether a period of 4 years envisaged in proviso to Section 16(1) should be reckoned from the date when the agreement was executed or from the date the publication of the

notification, under Section 3(1) after the agreement was executed and what would be the meaning of the words "from such date"? Before considering these questions, it is necessary to note few material facts and the preexisting law. Unmended Section 16(1) gave power to the Collector and all persons interested in the compensation, to agree for fixation of the amount of compensation by an award by consent. It is otherwise known as statutory agreement. There was no limitation prescribed for making the award by the Collector. Sub-section (2) makes the award conclusive evidence between the Government and the persons agreed of the value of the land and the amount of compensation allowed for the same. In other words, by an agreement, the value of the amount gets pegged down under the agreement, to the date of issuance of the notification under Section 3(1) of the Act, which is the same as Section 4(1) of the Land Acquisition Act (1 of 1894), a condition precedent for a declaration to follow under Section 6 of the Act. The claimant foregoes the right of reference under Section 18 of the Act. It is notorious that after publication of the notification under Section 4(1) of the Central Act and declaration under Section 6, years would roll by before making the award under Section 11 of the Central Act. In *State of Gujarat v. Patil Raghav Natha*³ the period of limitation under Bombay Land Revenue Act for exercise of the power under Section 65 came up for consideration. This Court held that: (SCC p. 193, para 11) "[T]hat there is no period of limitation prescribed under Section 21, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

In *Mansaram v. S.P. Pathak*⁴ this Court held that the power must be exercised "in a reasonable manner and the reasonable exercise of the power and it is exercised within a reasonable time". In the context of land acquisition, this Court in *State of M.P. v. Vishnu Prasad Sharma*⁵ had held that after the publication of the notification under Section 4(1) requiring particular land in a locality, it must expeditiously issue "declaration under 3 (1969) 2 SCC 187 : (1970) 1 SCR 335 4 (1984) 1 SCC 125 5 (1966) 3 SCR 557 : AIR 1966 SC 1593 Section 6 to that effect". That after pegging the price by the issuance of the notification under Section 4(1) the Government have no power to issue successive declarations under Section 6 in respect of parcels of land covered by notification under Section 4(1) at different times. Parliament amended Section 6 by the Land Acquisition (Amendment and Validation) Act, 1967 and gave power to the Government to make different declarations from time to time in respect of different parts of lands covered by the same notification under Section 4(1). However, it introduced a proviso prescribing limitation of 3 years from the date of the publication of the notification. In the Land Acquisition (Amendment) Act, 1984 it was further reduced to one year. Equally Section 11-A was made by 1984 Amendment Act prescribing 2 years' limitation from the date of publication of the declaration to make the award in respect of the proceedings taken under the Act and the proviso thereto gives further three years to make the award in the pending proceedings from the date of the commencement of 1984 Amendment Act. On expiry thereof, "proceedings for the acquisition of the land shall lapse". It is thus clear from the legislative mandate that the completion of passing of the award after the initiation of the acquisition proceedings are being unduly delayed and now it is enjoined to be done within 2 years from the date of publication of the declaration under Section 6. The Kerala Legislature recognising the same situation prevailing under the Act the Kerala Land Acquisition Amendment Act, 1980, suitably amended Sections 3 and 6 of that Act, Section 16(1) was also amended. Preceding thereto a Division Bench of that court in *Kalyankutti Ammal v. State of Kerala*⁶ interpreted the agreement and Section

16(1) and held that the agreement under Section 16(1) becomes void after the notification under Section 3(1) lapsed. To give effect to such a lapsed agreement Section 16(1) was suitably amended and proviso to Section 16(1) was made. The statement and objects in this behalf undoubtedly support the contention of the counsel for the Board that the word, "from such date" would be referable to the date of the publication of notification under Section 3(1), but in interpreting the effect of the proviso the court has to look into the purpose and the effect of the main Section 16(1) on the agreement entered into by the Collector and the person interested in the compensation. It is seen that the agreement ties the owner of the land with the market value mentioned thereunder, but undue delay in making the award leads to manifest injustice. Having had the power to make an award under the agreement and without any limitation the Collector would be left with his discretion to make the award leisurely at his whim or he may delay the issuance of the notification under Section 3(1) or may issue successive declarations under Section 6. This arbitrary exercise of power would result in hardship and manifest injustice to the owner of the land which would be violative of not only Article 14 of the Constitution, but also becomes an unfair procedure offending Article 21. Therefore, the legislature introduced the proviso. "Such date" referred to in the proviso, by necessary implication, must be referable to the date of the agreement, though by strict construction it may lead to the conclusion that "such date" may be referred to 6 ILR (1981) 2 Ker 53 the date of the publication of the notification under Section 3(1). When two views are possible, to avoid manifest injustice, unjustness and arbitrariness or unconstitutionality of the statute, construction in favour of sustaining the constitutionality should be leaned.

6. In *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal*⁷ this Court held that the proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to be confined to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says, nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect. In that case it was held that by reading the proviso consistent with the provisions of Section 88 of the Bombay Tenancy and Agricultural Act, the object of the main provision was sustained. In *A.N. Sehgal v. Raje Ram Sheoran*⁸ another Bench interpreting proviso in the Haryana Service of Engineers Rules, 1960 held that the proviso to Rule 5(2)(a) cannot be applied to confer the benefit of regular appointment on every promotee appointed in excess of 50% quota. This Court harmoniously read the main provision and the proviso and gave effect to the rule.

7. It would, thus, be clear that Section 16(1) and its proviso should be read in the context of Section 16(2) and if so harmoniously read to give effect to the scheme of Section 16, "such date" must be referable to the date of the agreement and not to the date of the notification published under Section 3(1) of the Act. Thus considered, we are broadly in agreement with the High Court on this aspect and hold that after the expiry of four years from the date of the agreement, namely 13-5-1977, the

Collector ceased to have power to pass the award under Section 16(1). It is to be seen that the agreement validly executed, does not become void after expiry of the period prescribed under the statute. It remains valid, but becomes unenforceable. Since the proviso prescribes a limitation on the exercise of the power by the Collector under Section 16(1) to make an award in terms of the contract, on its expiry he ceases to have power to make award in terms of the agreement. Since the High Court had not quashed the award with a view to avoid further delay, and directed the Collector to make a reference under Section 18 of the Act to the civil court, we are informed that such a reference was, in fact, made by the Collector and is pending. By interim orders this Court stayed further proceedings of the reference. Accordingly we dismiss the appeals and 7 (1991) 3 SCC 442 8 1992 Supp (1) SCC 304: 1993 SCC (L&S) 675 :(1993) 24 ATC direct the civil court to expeditiously determine the market value according to law. However, it is made clear that the observation of the High Court in the judgment under appeals "that the civil court shall not be bound by the terms of the agreement Ex. P-1 in the matter of determining the compensation" cannot come in the way of the Land Acquisition Collector relying upon the agreement as a piece of evidence as to what the parties had thought to be the market value of the acquired property with reference to the date of publication of preliminary notification and the court deciding on its evidentiary value in the matter of determination of the market value of the acquired property.

8. The appeals are dismissed, but in the circumstances parties would bear their respective costs.