State Of Maharashtra & Anr vs Sant Joginder Singh Kishan Singh & Ors on 22 February, 1995

Equivalent citations: 1995 AIR 2181, 1995 SCC SUPL. (2) 475, AIR 1995 SUPREME COURT 2181, 1995 AIR SCW 1560, (1995) 1 RENTLR 621, (1995) 2 LANDLR 219, (1995) 1 MAH LJ 793, (1995) 2 SCR 242 (SC), (1995) 3 SCJ 143, (1995) 2 CURCC 1, 1995 SCC (SUPP) 2 475, 1996 BOMCJ 1 195, (1995) 3 JT 21 (SC)

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Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:
STATE OF MAHARASHTRA & ANR.

Vs.

RESPONDENT:
SANT JOGINDER SINGH KISHAN SINGH & ORS.

DATE OF JUDGMENT22/02/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1995 AIR 2181 1995 SCC Supl. (2) 475
JT 1995 (3) 21 1995 SCALE (2)121

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. S.L.P. Nos. 18079/91, 17883/90 taken on board. Substitution allowed.

2. Leave granted in all the S.L.Ps.

3. A common question of law arises for decision in these matters. Hence, they are disposed of together.

4. The Maharashtra Regional & Town Planning, Act 37 of 1966, (for short 'the Act') was invoked for acquiring the land in question by the Regional & Town Planning Board for planned development in the State of Maharashtra. The facts in C.A. No.4925/89 are sufficient for consideration and decision in these appeals. The Act was amended by Amendment Act 1970 which came into force on February 17, 1971 as Act 14 of 197 1. A notification under s. 125 of the Act was published on December 28, 1972. The land could be acquired by agreement with the owner, or making an application to the State Government for acquisition under Land Acquisition Act, 1894, (for short 'the Central Act') in which event by operation of the proviso to sub-s.(2) of s. 126, the declaration has to be made within three years from the date of the publication of notification under s. 125. The notification under s. 125 is treated as one s.4(1) and the declaration under s.2 of s. 126 as declaration under s.6 of the Central Act. The failure to have the declaration published within three years. entails with the prohibition to take further action in acquiring the land.

5. Sub-s.(4) lifts the embargo thus:

> "(4) If a declaration is not made within the period referred to in sub-s.(2) or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1970, the State Government may make a fresh declaration for acquiring the land under the Land Acquisitio n Act, 1894, in the manner provided by sub-

ss.(2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh. "

6. A reading of sub-s.(4) would give us the legislative intent that if declaration is not made within three years or having been made, the aforesaid period expired on the commencement of the Amendment Act, the State Government has been empowered to make a fresh declaration for acquiring the land in the manner provided by sub-ss.(2) and (3) of s.126. The rider to the exercise of the power of eminent domain is that the market value of the land should be as at the date of fresh declaration under s.126(2) published in the offi- cial Gazette. In other words, on publication of the notification under s.125, the market value has been pegged down to the date of its publication in the State Gazette. Since there lapsed time between the dates of the notification and the declaration, the owner is relieved from the hardship of determination of compensation as per prices prevailing as on the notification under s. 125; and the rise in the market value between the dates of the publication of the notification and the declaration is set off. The legislature while giving power to the State to issue declaration after the expiry of three years or having made the fresh declaration as valid, relieved the owner or person interested in the land from hardship; and the crucial date for determination of the compensation is the date on which the declaration under sub-s.(4) of s.126 is published in the

official gazette treating that declaration as a fresh one. Thereby the legislative intention would be clear that though three years period had expired after the publication of the notification under s. 125 or the declaration made under sub- s.(2) had expired before the commencement of the Amendment Act, the State Government has been given power to have the declaration published afresh. In other words, power was given to have the declaration published afresh so as to proceed with making the award but to determine the compensation as per the price prevailing as on the date of the fresh declaration published in the Gazette afresh.

7. Dr. N.M. Ghatate, learned Senior counsel for the respondents, contends that since acquisition of the land is compulsory expropriation, restrictive interpretation should be given. He further contends that though there is no express provision that the notification published under s. 125 would lapse, by operation of s. 11A of the Central Act introduced by the L.A. Amendment Act 68 of 1984, award has to be made within two years from the date of declaration published under s.6 of the Central Act i.e. under s. 126(2) of the Act; and this period of limitation must be deemed to have been incorporated in the Act. Thereby, the only course open to the State is to issue the notification under s.125 afresh, if law permits and it should not resort to the publication of the declaration under sub-s.(4) of s. 126.

8. We find no force in the contentions. The legislature being cognizant of the consequences that would flow from long delay in publication of the declaration in the official gazette under sub-s.(2) of s. 126, provision was made in that behalf to put a fetter on the exercise of power under s. 126(2) and simultaneously mitigated -the hardship to be caused to the public purpose as well as to private interest of the owner of the land. In other words, while permitting the State to exercise its power of eminent domain, the owner of the land or the person interested in the land has been relieved of hardship of payment of the compensation as per the price prevailing as on the date of publication of the notification under s. 125 [s.4(1) of the Central Act] and directed that market value be determined as on the date of publication of the fresh declaration under sub-s.(4) of s.

126.

9. This Court in Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants Association & Ors., 1988 (supp.) SCC 55, had considered the effect of provisions of s. 126, in particular the proviso to sub-ss.(2) and (4), while angulating the reservation under s. 127 and held thus:

> "The conjoint effect of sub-ss.(1), (2) and (4) of s. 126 is that if no declaration is made within the period referred to in sub-

s.(2), that is to say, before the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, the compensation payable to the owner of the land for such acquisition, in that event, shall be the market value on the date of the fresh declaration under s.6 of the Land Acquisition Act i.e. the market value not at the date of the notification under s.4(1) of the Land Acquisition Act but the market value at the date of declaration under s.6.

That is one of the safeguards provided under the Act. "

10. Therefore, it would be clear that though declaration under sub-s.(2) of s. 126 is not made within three years as prescribed under proviso to sub-s.(2) of s. 126, by nec- essary inference it would be construed that notification under s. 125 does not lapse and fresh declaration made under sub-s.(4) of s. 126 is valid, be it made after the Amendment Act came into force or the one made under the unamended Act and three years had expired before the Amendment Act has come into force. The Government was then clearly within its power to have, published the declaration under sub-s.(2) of s. 126 in the Official Gazette. This conclusion of ours gets fortified from the consideration of the effect of s. 127, as interpreted by this Court in aforesaid case.

11. It is next contended by Dr. N.M. Ghatate that in appeal arising from S.L.P. No.5251/90 since the award has not been made within two years from the date of the declaration under sub-s.(2) of s.126, by operation of s. 11A of the Central Act, the notification published under s. 125 shall be deemed to have been lapsed and, therefore, the authorities are devoid of jurisdiction to proceed further. We find no force in the contention too. It is seen that the State legislature amended the Act by the Amendment Act and introduced 3 years limitation for publication of the declaration under sub-s.(2) of s. 126. In s. 128, it had expressly engrafted the provisions of ss. 16, 17 and 24 of the Central Act as its part. In other words, wherever the legislature intended to apply the specific procedure or the fetters in exercising the power as visualised by the Central Act, it did so specifically. After the Central Act 68 of 1984 has come into force, no attempt was taken by the State legislature to amend the Act introducing or incorporating s. 11A of the Central Act as part of the Act. Since the legislature had incorporated specific provisions of the Central Act, the necessary conclusion is that the legislature did not intend to apply the unspecified provisions of the Central Act to the exercise of power under the Act. In this behalf it is to be remembered that there is a distinction between incorporation and adoption by ref- erence. If the legislature would have merely adopted the Central Act, subsequent amendments to that Act made under Act 68 of 1984 would have become applicable per force.

12.In Gauri Shankar Gaur v. State UP., 1994 (1) SCC 92, the U.P. legislature, while enacting U.P. A was Evam Vikas Parishad Adhiniyam, 1965, enacted s.55 and the schedule annexed to the Act making appropriate incorporation therein of the provisions of the Central Act. It was contended that as the Central Amendment Act 68 of 1984 prescribed limitation of 3 years for publication of the declaration under s.6, on expiry thereof, the notification under s.28 of the Adhiniyam stood lapsed. The correctness of the contention and the scope and ambit of s.55 read with the schedule was considered by one of us (K. Ramaswamy, J.). After exhaustive consideration of the case law on the topic in paragraphs 31-32, it was held that in legislation by incorporation, the provisions of the former Act becomes an integral part of the latter Act, as if it was written with ink and printed in the later Act. It is not so in case of adoption by reference. In such a case, when provisions in the former Act are repealed or amended, they cannot, unless expressly made applicable to the subsequent Act, be deemed to be incorporated in it. The later Act is totally unaffected by any amendment or repeal. Whether a case is one of incorporative or reference is to be judged from the scheme, language employed and purpose the statute seeks to achieve. If a later Act merely makes a reference to the earlier Act or existing law, it is only by way of reference and all amendments subsequently made will have effect, unless its operation is saved by section 8(1) of the General Clauses Act or it is void under Art.254 of the Constitution. It was held in that case that s.55 of the Act read with the schedule

merely incorporated the provisions of the Central Act and so, subsequent amendments to s.6 of the Central Act did not form part of the Adhiniyam and they have no effect on the provisions of the Adhiniyam. Similar is the position under the Act.

13. It is next contended that since no separate procedure was prescribed by the Act for determining the compensation, by necessary inference, the Central Act was intended to be applied mutatis mutandis to the acquisition under the Act. He seeks support from the award made by the Collector in that behalf It is true that there is no express provision under the Act to determine compensation for the land acquired under the Act. Therefore, by necessary implication, compensation need to be determined applying the principles in s.23 of the Central Act. But, there is a distinction between procedural and substantive provisions of a; statute. Determination of compensation by applying appropriate principles is relatable to substantive provision, whereas making of award within a prescribed period is basically procedural. So, merely because s. 23 of the Central Act would apply to acquisition under the Act, is not enough to hold that what is contained in s. 11-A would also apply. Further, what has been provided in sub-s.(4) ,of s. 126 of the Act is clear indication that failure to make the award within two years from the date of the declaration under subs.(2) of s. 126 of the Act, would not render the notification published under s. 125 of the Act non-est.

14. A Full Bench of the High Court recently considered the question as to whether the Amendment Act applies not only to the proceedings which were pending when the Amendment was brought into force but also to the proceedings initiated afterwards in Shiorani v. State of Maharashtra, 1994 Mh.L.J. 182 1; and has opined that it applies to later proceedings also. We are in agreement with the reasoning and the conclusion of the Full Bench, as this is clear even from the opening part of sub-s.(4). Therefore, the Division Bench of the High Court was not right in its conclusion that the Amendment Act would apply only to the pending proceedings.

15. All the appeals, except Civil Appeal No.62/92, are allowed; Civil Appeal No.62/92, however, stands dismissed. 'The orders and judgments of the High Court in the appeals hereby allowed are set aside. Consequently, the notifications and the declarations which are subject matter of those appeals stand upheld. The authorities would be at liberty to proceed further in accordance with the law. No costs.