

National Coal Development Corporation vs Manmohan Mathur on 15 January, 1970

Equivalent citations: 1970 AIR 1223, 1970 SCR (3) 409, AIR 1970 SUPREME COURT 1223, 1970 MAH LJ 551, 1970 MPLJ 547, 1970 SCD 301, 1970 JABLJ 230

Author: M. Hidayatullah

Bench: M. Hidayatullah, J.M. Shelat, C.A. Vaidyalingam, A.N. Grover, A.N. Ray

PETITIONER:
NATIONAL COAL DEVELOPMENT CORPORATION

Vs.

RESPONDENT:
MANMOHAN MATHUR

DATE OF JUDGMENT:
15/01/1970

BENCH:
HIDAYATULLAH, M. (CJ)
BENCH:
HIDAYATULLAH, M. (CJ)
SHELAT, J.M.
VAIDYIALINGAM, C.A.
GROVER, A.N.
RAY, A.N.

CITATION:
1970 AIR 1223 1970 SCR (3) 409
1970 SCC (1) 208

ACT:
Retrospective Legislation-Acquisition held invalid by High Court as notification required under s. 7 Coal Bearing Areas (Acquisition and Development) Act (20 of 1957) not issued-Notification deemed to have been issued by provisions of Amending Act 23 of 1969-Effect.

HEADNOTE:
A notification stating that the respondent's lands were needed for prospecting coal, was issued under s. 4(1) of the

Land Acquisition Act, 1894. No objection under s. 5A of the Act was made by the respondent. Thereafter the Coal Bearing Areas (Acquisition and Development) Act, 1957, came into force. Under s. 28 of the 1957-Act, all notifications and objections made under the Land Acquisition Act were deemed to be notifications and objections under the 1957-Act. Section 7 of 1957-Act requires the issue of a notification before acquisition under s. 9(1) of that Act. In the present case, the Central Government acquired a certain area on behalf of the appellant under s. 9 of the 1957-Act, from the area notified under s. 4(1) of the Land Acquisition Act without issuing the s. 7 notification. The respondent challenged the acquisition by a writ petition and the High Court allowed it. While the appeal against the judgment of the High Court was pending in this Court, the 1957-Act was amended by the Coal Bearing Areas (Acquisition and Development) Amendment Act, 1969. The consequences of the amendments introduced by the Amendment Act are that if no objection had been preferred under s. 5A of the Land Acquisition Act within the period specified, then it shall be deemed that a notification under s. 7 of the Act 1957-Act has been issued; that no objection to the acquisition of the land under s. 8 of the 1957-Act has been preferred; and that the Government could therefore make the acquisition under s. 9 of the 1957Act. Also, the effect of a decision of a court was removed as if the amended Act was in force at all material time.

HELD : Legislation making obligatory notifications fictional may not be proper, but since Parliament was competent to make such fictions, the acquisition could not be questioned. [414 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1639 of 1966.

Appeal from the judgment and decree dated November 15, 1965 of the Madhya Pradesh High Court in Misc. Petition No. 66 of 1965.

Jagdish Swarup, Solicitor-General, S. K. Dholakia and R. H. Dhebar, for the appellants.

W. S. Barlingay, D. D. Verma, R. Mahalingier and Ganpat Rai, for the respondent.

The Judgment of the Court was delivered by Hidayatullah, C.J. The National Coal Development Corporation Ltd. appeals against the judgment and decree of the High Court of Madhya Pradesh, November 15, 1965, in an application under Art. 226 of the Constitution. By the judgment under appeal the appellants are restrained from carrying on depillaring operations underneath the land of the respondent Manmohan Mathur in village Chirimiri in District Surguja in Madhya Pradesh.

The facts are as follows: Chirimiri is a coal-bearing area. On February 1, 1957 the Government of Madhya Pradesh, acting in exercise of the functions of the Central Government under the Land Acquisition Act, 1894 entrusted to it by the President under Art. 258(1) of the Constitution, issued notification under s. 4(1) of the Land Acquisition Act stating that the lands specified in Chirimiri village were needed for the prospecting of coal seams for development of collieries, by the Central Government. On June 8, 1957 the Coal Bearing Areas (Acquisition, and Development) Act (XX of 1957) was enacted and was brought into force. On August 7, 1958 the Central Government purporting to act under s. 9(1) of Act XX of 1957 issued a notification acquiring land measuring 145-75 acres described in the notification. In that notification it was stated that no objection was received after the notification under s. 4 of the Land Acquisition Act. On April 16, 1964 the appellant gave notice to the respondent that he should vacate the said land within 30 days of the receipt of the notice and any super-structure and material that may be on that land be removed. It was also stated that the mining rights in village Chirimiri acquired by the Central Government had been vested in the appellant under an order of the Government dated September 30, 1958. The respondent was also informed that there were coal mines underneath his land and that the appellant would soon commence depillaring operations. The petition under Art. 226 was then filed in the Madhya Pradesh High Court to restrain the appellant from enforcing the provisions of Act XX of 1957 against the respondent.

Many arguments were advanced against the action of the Central Government and the appellant. One of them succeeded on the basis of which the appellant was restrained by a mandamus from proceeding under Act XX of 1957. The objection which succeeded was that no notification under S. 7 of Act XX of 1957 had been issued by the Central Government and that the subsequent, action was, therefore, invalid.

To understand the objection which was sustained by the High Court it is necessary to refer briefly to a part of the scheme of Act XX of 1957. It will be noticed that the initial notification was under

s. 4(1) of the Land Acquisition Act, 1894. That notification was issued at a time when Act XX of 1957 was not enacted. Subsequently under s. 28 of Act XX of 1957 it was provided that every notification issued under s. 4(1) of the Land Acquisition Act before the commencement of Act XX of 1957 whether by the Central Government or by a State Government should be deemed to be a notification under s. 4 of Act XX of 1957. Similarly, it was provided that every notification issued under s. 6 of the Land Acquisition Act, before the commencement of Act XX of 1957, whether by the Central Government or by a State Government, should be deemed to be issued under s. 9 of Act XX of 1957 and lastly it was provided that any objection preferred under s. 5A of the Land Acquisition Act, 1894 in respect of any land covered by any notification under s. 4 should be deemed to be, an objection preferred under s. 8 of Act XX of 1957. In other words, all notifications and objections etc. made

-under the Land Acquisition Act, 1894 were by a fiction brought under Act XX of 1957. It may be pointed out here that no objection under s. 5A of the Land Acquisition Act, 1894 was made by the present respondent.

There was, however, one other section, namely, s. 7 in Act XX of 1957 to the following effect :

"7. Power to acquire land or rights in or over land notified under section 4.

(1) If the Central Government is satisfied that coal is obtainable in the whole or any part of the land notified under sub-section (1) of section 4, it may, within a period of two years from the date of the said notification or within such further period not exceeding one year in the aggregate as the Central Government may specify in this behalf, by notification in the Official Gazette, give notice of its intention to acquire the whole or any part of the land or of any rights in or over such land, as the case may be.

(2) If no notice to acquire the land or any rights in or over such land is given under sub-section (1) within the period allowed thereunder, the notification issued under sub-section (1) of section 4 shall cease to have effect on the expiration of three years from the date thereof."

It is this notification which the High Court found missing and therefore all subsequent action under Act XX of 1957 was held to be invalid.

It is not necessary to discuss the correctness or otherwise of the view of the High Court because on August 11, 1969 Coal Bearing Areas (Acquisition and Development) Amendment Act XXIII of 1969 was enacted. By this amending Act s. 28(3) was amended by removal of certain words and substitution retrospectively of other words. The amending Act also added a new subSection, numbered 3A and also enacted S. 3 by which the validation of acquisitions found ineffective by-the Courts was made. It is necessary to refer to the, amending Act.

Sub-section 3. of s. 28, as amended by Act 51 of 1957 (to which Act detailed reference is not necessary), reads as follows "Any objection preferred under s. 5A of the said Act (Land Acquisition Act, 1894) in respect of any land covered by any notification issued under section 4 of the said Act (Land Acquisition Act, 1894) shall be deemed to be an objection preferred under section 8 of this Act to the relevant competent authority and may be disposed of by him as if the objection had been made in relation to a notification issued under section 7 of this Act in respect of such land; and the Central Government may at any time make a declaration under s. 9 of this Act (Act XX of 1957) in respect of such land or any part thereof." By the amending Act XXIII of 1969 the portion beginning with "in respect of such land" and ending with "or any part thereof" were substituted retrospectively by the words-

"in respect of such land or of any rights in or over such land; and the Central Government may at any time make a declaration under section 9 of this Act in respect of land or any part thereof or any rights in or over such land or part."

Simultaneously sub-section 3-A was introduced and that reads "3A. Where in respect of any land covered by any notification issued under section 4 of the said Act, no objection has been preferred under section 5A thereof within the period specified in that section, then it shall be deemed that a notification had, been issued under section 7 of this Act in respect of such land or of any rights in or over such land and that no objection to the acquisition of the land or any rights in or over land had been preferred under section 8 of this Act, and accordingly the Central Government may at any time make a declaration under section 9 of this Act in respect of the land or any part thereof or any rights in or over such land or part."

Finally by section 3 of the Amending Act acquisitions were validated. Section 3 reads :-

"3. Validation of certain acquisitions.

Notwithstanding any judgment, decree or order of any court, every acquisition of land or the rights in or over land made by the Central Government in pursuance of the, notifications of the Government of India in the late Ministry of Steel, Mines and Fuel (Department of Mines and Fuel) Nos. S.O. 1759 and S.O. 25, dated the 7th August, 1958, and the 22nd December, 1959 respectively, made under section 9 of the principal Act, shall be, and shall be deemed always to have been, as valid as if the provisions of section 28 thereof as amended by this Act were in force at all material times when such acquisition was made and shall not be called in question in -any court of law on the ground only that before issuing such notifications no notification was issued under section 7 of the principal Act in relation to the land or rights in or over such land 'Covered by the said notifications Nos. S.O. 1759 and S.O. 25'".

In view of this amendment it is obvious that now under the scheme of Act XX of 1957, as amended by Act 51 of 1957 and Act XXIII of 1969 a notification under s. 4(1) of the Land Acquisition Act, 1894 is by fiction a notification under s. 4 of Act XX of 1957; an objection under s. 5A of the Land Acquisition Act, 1894 is deemed to be an objection under s. 8 of Act XX of 1957. It is also provided that if no objection had been preferred under s. 5A of the Land Acquisition Act, 1894 within the period specified in that Act, then it shall be deemed that a notification has been issued under s. 7 of this Act in respect of the land and further that no objection to the acquisition of the land or any rights in or over that, land has been preferred under s. 8 of the Act and accordingly the Central Government may at any time make a declaration under s. 9 of Act XX of 1957 in respect of that land. By section 3 the effect of a decision of a court is removed as if the provisions of s. 28 of Act XX of 1957, as amended by Act XXIII of 1969 were in force at all material times.

Learned counsel for the respondent could not point to anything by which the amending Act could be called in question. It was conceded that it was within the competence of Parliament to create the fictions it has created in the original Act XX of 1957 and again by the amending Act XXIII of 1969. Learned counsel, however, said that we must take a humane view of the position of a person like the respondent who would lose his all by the acquisition and that too through legislation which makes the provisions fictional rather than real. As to the first part we can only say that if the law allows it, the court must award it and as to the second part we say that this kind of legislation by making

obligatory notifications fictional does not accord with our sense of propriety but we cannot say anything against it since Parliament undoubtedly possesses the power to make such fictions.

In the result the appeal must be allowed, but we make no order about costs.

V. P. S. Appeal allowed.