Ramniklal N. Bhutta & Anr vs State Of Maharashtra & Ors on 19 November, 1996

Equivalent citations: AIR 1997 SUPREME COURT 1236, 1997 (1) SCC 134, 1997 AIR SCW 1281, (1996) 10 JT 452 (SC), (1997) 1 LJR 68, (1997) 1 ICC 245, (1997) 2 LANDLR 258, (1996) 4 SCJ 258, (1997) LACC 205

Author: B.P. Jeevan Reddy

Bench: K.S. Paripoornan, B.P. Jeevan Reddy

PETITIONER:
RAMNIKLAL N. BHUTTA & ANR.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT: 19/11/1996

BENCH:
B.P. JEEVAN REEDY, K.S. PARIPOORNAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P. JEEVAN REDDY, J.

Leave granted.

This appeal is preferred against the order of the Bombay High Court dismissing the review petition filed by the appellant. The review petition was filed by the appellant against the order dismissing his writ petition by Division Bench. The matter under the land Acquisition Act, 1894.

By a notification dated November 29, 1979 issued under Section 4 of the Land Acquisition Act, 1894

[the Act], two pieces of land were notified for acquisition for a public purpose, to wit, "for Bombay Electric Supply and Transport Undertaking for bus station." The two pieces of land notified are C.T.S. No.218 admeasuring 1759 sq.mtrs. and C.T.S.No. 211 admeasuring 370 sq.mtrs. The appellant claims to the owner of C.T.S.No. 211. The declaration under section 6 was made on December 16, 1982. C.T.S.No. 218 belongs to a Church but there are others who claim to have interest in the said land, viz., Vijayanand Singh and Gayatri Darshan Cooperative Housing Society. The BEST entered into a settlement with the said two persons whereunder and extent of 906 sq.mtrs. was given on a perpetual lease to BEST free of any charge, i.e., Re.1/- per annum. The lease deed executed by the said two persons in favour of the Bombay Municipal Corporation [representing BEST] is dated August 21, 1986. The remaining portion was to be utilised by the said persons for their won purposed including construction of a multi-storeyed complex for the employees of Bombay Municipal Corporation. Under the said settlement, the said two persons also agreed to construct a bus station, in the portion leased out to BEST, at their own cost and hand it over to the BEST free of cost. This settlement was brought to the notice of the Land Acquisition Officer by the Additional Collector through his letter dated September 5, 1986. On September 18, 1986, the Land Acquisition Officer passed his award wherein he referred to the aforesaid settlement brought to his notice and, on that basis , did not deal with or make any award of compensation with respect to C.T.S.No. 218. His award was confined only to C.T.S.No. 211. When the appellant came to know of the aforesaid facts, he addressed a letter to the authorities contending that exclusion on C.T.S.No. 210 from acquisition and passing the award only with respect to C.T.S.No. 211 was illegal. On November 10, 1986, he filed a writ petition challenging acquisition of C.T.S.No. 211 on various grounds. The writ petition was summarily dismissed by a learned Single Judge by his order dated December 8, 1986 against which the appellant preferred a writ appeal/Letters Patent Appeal No. 1868 of 1986. The Letters Patent Appeal was allowed and the writ petition restored to file. It came up for hearing before a Division Bench on June 15, 1995. On that day, the advocate for the appellant asked for an adjournment and on that being declined, reported "no instructions". The writ petition was dismissed with costs. The appellant then filed a review petition contending that the statement by his counsel on June 15, 1995 that he had no instructions was a false one and that the advocate had not really contracted him. He requested that the writ petition may be heard on merits. The Division Bench heard the parties at length and dismissed the writ petition again. It opined that having regard to the fact that the writ petition again. It opined that having regard to the fact that the acquisition notification was issued in 1979, that the writ petition has been pending in the High Court since 1986 and more particularly, having regard to the purpose of acquisition, no interference was warranted under Article 226 of the Constitution. The Division Bench also went into the merits of the case and rejected both the contentions of the appellant on that score, viz., (1) that the public notice under Section 4(1) of the Act was not served upon the appellant and (2) that the acquisition proceedings are vitiated by malafides. The plea of malafides put forward by the appellant was based upon the following facts: the promoters of the Gayatri Darshan Cooperative Housing Society had entered into an agreement on sale with Vijayanand Singh who claims to be the owner of C.T.S.No. 218. The society formed by the employees of the Bombay Municipal Corporation. The promoters of the society wanted to purchase the appellant`s plot with a view to obtain frontage on the road. The negotiations, however, failed whereupon with a view to deprive the appellant of his title and interest on C.T.S.No. 218, the promoters got the user of the said plot changed from "residential" and "fish market". The said change of user in the development plan was approved by BEST and the

Corporation contrary to law. As stated above, the High Court rejected the plea of malafides. The High Court also observed that one Misquitta claimed to be the owner of C.T.S.No. 211 and that he had also appeared in the land acquisition proceedings whereas the appellant entered the picture much later. It is not even clear, the High Court observed, whether the appellant had any interest in the said plot on the date of issuance of notification under Section

4. Sri Parag Tripathi, learned counsel for the appellant, urged the following contentions:

> (a) that once a notification under Section 4(1) of the Act was issued with respect to C.T.S.No. 218 as well as C.T.S.No. 211, the Land Acquisition Officer was bound to pass an award with respect to both the pieces of land. He had no jurisdiction or authority not to pass the award in respect of C.T.S.No. 218 on the ground of an alleged settlement reported to him by the person for whose benefit it was being acquired. Until and unless a notification was issued under Section 48 of the Act, the Land Acquisition Officer had no option but to pass an award with respect to both the lands notified. The illegality committed by the Land Acquisition officer in not passing an award with respect to C.T.S.No. 218 vitiates the award as a whole; it is liable to be struck down even with respect to C.T.S. No.
>
> 211.

(b) The result of the alleged settlement between the BEST and the two persons aforesaid [Vijayanand Singh and the Housing Society] is that as against the total extent of 1759 sq.mtrs. in C.T.S.No. 218 notified for acquisition, the BEST is satisfied with only 906 sq.mtrs. Together with 370 sq.mtrs. in C.T.S.No. 211, the BEST would be having approximately 1276 sq.mtrs. which is obviously sufficient for its purpose, viz., for establishing the bus station. If an extent of 1320 sq.mtrs. is sufficient for its purposes, there is no explanation why a larger extent of 2129 sq. mtrs. was notified for acquisition. It was not open to BEST [Bombay Municipal Corporation] to give up a part of the land proposed to be acquired under a private treaty with the persons interested. The very fact that part of the land notified for acquisition for an alleged public purpose has been surrendered to others including for the purpose of constructing a residential complex for the employees of the Bombay Municipal Corporation shows that the alleged public purpose mentioned in the notification under Section 4 is not real and is only a ruse to help the aforesaid housing society. The plea of malafides has been erroneously rejected by the High Court.

(c) The malafides of the BEST is also evident from the fact that it has not yet got possession of even the 906 sq.mtrs. which it bargained under the settlement. A good amount of litigation has ensued and is pending in that behalf. The church is disputing the settlement and no bus station has been established so far on the land. All this shows that entire proposal for acquisition has failed, mainly on account of the private settlement between BEST and the said two persons. Acquisition of C.T.S.No. 211 with a small extent of 370 sq.mtrs. Serves no purpose.

On the other hand, Sri T.R. Andhyarujina, learned Solicitor General, supported the validity of the acquisition of C.T.S.No. 211. He submitted that the settlement was arrived at in good faith and in the

interests of the BEST which is evident from the fact that the BEST got an extent of 906 sq.mtrs. free of cost on perpetual lease. In addition to that, it has also got a bus station to be constructed by the said two persons free of any cost to the BEST. It is true, the learned Solicitor General said that the proper course would have been to have a notification issued under Section 48 of the Act deleting C.T.S.No. 218 from acquisition by that was not done because of the constriction of time. The award had to be passed on or before September 23, 1986 and waiting for a notification under Section 48 would have meant dropping the acquisition proceedings altogether in as much as no award could have been passed after September 23, 1986 by virtue of the provisions contained in Section 11 of the Act. It was for this reason that the award had to be and was passed on September 18, 1986. The learned solicitor General further submitted that in the context of the above facts, the circumstance that the award passed by the Land Acquisition Officer does not pertain to C.T.S.No. 218 cannot constitute a ground for quashing the acquisition with respect to C.T.S.No. 211 so long as the public purpose behind its acquisition remained. The malafides is totally unacceptable and has unacceptable and has rightly been rejected by the High Court.

We are of the opinion that the straight-froward course for the Land Acquisition Officer and for the BEST [Bombay Municipal Corporation] was to press ahead with the acquisition proceedings even with respect to C.T.S.No. 218 and have it acquired according to law, along with C.T.S.No.

211. Instead of adopting the straight-forward course, the BEST entered into a settlement withe the aforementioned vijayanand Singh and the housing society- and that seems to have spawned a good amount of litigation. It is said that some suit is still pending with respect to C.T.S.No. 218. May be or may not be. But one thing is clear: all this could have been avoided and the land could have been acquired for the BEST by pressing ahead with the land acquisition proceedings, in which case, the land would have vested in the government free of all claims and which could have in turn been vested in Bombay Municipal Corporation [BEST]. Not following this course has led to perhaps avoidable litigation though it si true, the BEST claim to have obtained half the extent in C.T.S.No. 218 free of cost in addition to the bus station. We presume that the settlement aforesaid was entered into by Bombay Municipal Corporation/BEST in good faith and with a view to advance the interests of BEST and that the error, if any, is an error of judgment.

Coming to the first contention of Sri Parag Tripathi, we agree with the proposition of law that once a notification under Section 4 and a declaration under Section 6 of the Act is made, the Land Acquisition Officer has no power to decline to pass the award in respect of the land(s) notified, either partly or wholly. Unless and until the land

(s) are denotified under and in accordance with Section 48, the Land Acquisition Officer has to pass an award with respect to the lands notified. Sri Tripathi may also he right in saying that Land Acquisition Officer had no jurisdiction to take notice of a private settlement and making it a basis for not passing the award with respect to C.T.S.No. 218. But the question is whether it can be said in the facts and circumstances of this case, that the acquisition of C.T.S.No. 211 is liable to be quashed on the said ground. We think not. We have already held that in the absence of any material to the contrary, we must assume that the said settlement was arrived at keeping in view the best interests of BEST. Even the 906 sq.mtrs. of land obtained on perpetual lease under the settlement is meant

for being used for the purpose stated in the notification under Section 4. There is also no material to show that the purpose stated in the said notification is not true or real. The fact that instead of 1759 sq.mtrs., BEST got only 906 sq.mtrs. under the settlement does not establish the absence of the need. It may well be a case of adjusting to the realities of the situation. In such a situation, it is difficult to say that the acquisition of C.T.S.No.211 is either unnecessary or that it is neither be consistent with law nor with public interest. It should also be remembered in this context that the appellant is not disputing the purpose of acquisition. His only contention is that since the award has "deleted" C.T.S.No. 218, the land C.T.S.No. 211 should also be deleted

- an argument which we have rejected. Indeed, he had not challenged the acquisition from 1979 to 1986. only after the award was passed, did he choose to challenge the acquisition on the aforesaid grounds. Accordingly, we reject the first contention of Sri Tripathi.

So far as the plea of a malafides is concerned, we do not find any adequate material to record a finding in favour of the appellant. There is no material to hold that the acquisition notifications was issued at the instance of the aforementioned employees of the housing society or for that matter at the instance of Vijayanand Singh. There is no material to hold that the BEST was acting at the instance of the said persons or that there was no real or genuine need for a bus station there. We are also not able to say that the change of user has any relevance to the plea of malafides put forward by the appellant.

Lastly, we must also refer to the lack of diligence on the part of the appellant. His writ petition was pending since 1786. It came up for hearing in 1995. His counsel asked for an adjournment which was declined whereupon the counsel stated that the appellant had taken away all the papers and has not given him any instructions in the matter. He reported "no instructions". The Division Bench was of the opinion that it was only apply to protract and delay the disposal of the writ petition. It dismissed the same. When a review petition was filed by the appellant with a certain explanation. We cannot say that the High Court was not justified in doing so. Be that as it may, the High Court also went into the merits of the case though it was not obliged to do so in a review petition. On merits also, it found no case for the appellant. We too have come to the same conclusion.

Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are

also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.

The appeal fails and is dismissed. There shall, however, be no order as to costs.