Raj Kumar Johri And Anr vs State Of M.P. And Ors on 7 March, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1519, 2002 AIR SCW 1401, 2002 (4) SRJ 320, 2002 (3) SCALE 17, 2002 (3) SCC 732, (2002) 3 JT 340 (SC), 2002 (2) SLT 591, 2002 (2) UPLBEC 1538, (2001) 2 MAD LJ 734, (2002) 1 LACC 568, (2002) 2 LANDLR 462, (2002) 2 MAD LJ 192, (2002) 3 MAHLR 584, (2002) 2 RAJ LW 343, (2002) 2 SCJ 367, (2002) 2 UPLBEC 1538, (2002) 2 SUPREME 508, (2002) 2 RECCIVR 378, (2002) 2 ICC 767, (2002) 3 SCALE 17, (2002) 1 UC 722, (2002) 47 ALL LR 783, (2002) 2 ALL WC 1398, (2002) 3 CIVLJ 340, (2002) 2 CURCC 52

Bench: V.N. Khare, Ashok Bhan, D.M. Dharmadhikari

CASE NO.:
Appeal (civil) 5938-5939 of 2000

PETITIONER:
RAJ KUMAR JOHRI AND ANR.

RESPONDENT:
STATE OF M.P. AND ORS.

DATE OF JUDGMENT: 07/03/2002

BENCH:
V.N. KHARE & ASHOK BHAN & D.M. DHARMADHIKARI

JUDGMENT:

JUDGMENT 2002 (2) SCR 512 The following Order of the Court was delivered :

> In September, 1977 for acquisition of more than 600 hectares of land, a notification under Section 4(1) of the Land Acquisition Act (for short 'the Act') was issued for the purpose of development of Ujjain, a historical town in Madhya Pradesh. On September 17, 1980, for different reasons the notification was quashed. On 21 st August, 1985 the impugned notification was issued afresh under Section 4(1) of the Act. Declaration under section 6 was issued on 25th of July, 1986. The award was made on 22nd July, 1988.

The appellants whose land had been acquired filed Writ Petition No. 1707 of 1986 challenging the notification under Section 4 and the declaration under Section 6 of the Act to the extent of the acquisition of their land. Indore Bench of the High Court rendered the Judgment annulling the notification issued under Section 4 of the Act by holding that Scheme No. 23 framed under M.P.

Nagar Tatha Gram Nivesh Adhiniyam, 1973 did not operate against certain specified land of the respondent Ujjain Vikas Pradhikaran (hereinafter referred to as the 'Development Authority').

The Development Authority, being aggrieved, against the Judgment of the High Court filed Civil Appeal Nos. 4554-4556 of 1991 which were disposed of by an order of this Court on November 14, 1991. The same is reported in Ujjain Vikas Pradhikaran v. Raj Kumar Johri and Ors., [1992] l SCC 328.

Although a finding was recorded by this Court that the Judgment of the High Court could not be faulted with, but still it was held that due to the peculiar facts and circumstances of the case the judgment of the High Court could not be sustained, accordingly, the judgment of the High Court was set aside and the acquisition of the land was upheld.

Keeping in view the peculiar facts and circumstances of the case, the date of notification under Section 4(1) was postponed to Ist January, 1988 for the purpose of determination of the compensation. It was observed :

> "Looking at the matter from these different angles, we have thought it appropriate to allow the appeal, vacate the judgment of the High Court and allow the acquisition to remain subject, however, to the condition that the notification under Section 4(1) of the Act issued in 1985 shall be deemed to be one dated January l, 1988 and the market value of the land for the acquisition shall be determined with reference to that date. We would like to point out that the potential value of the land has substantially enhanced on account of the improvements made pursuant to the notification which had been assailed. We have directed the deemed date of the notification under Section 4(1) to be preponed (sic postponed) by almost three years and during this period the appellant has brought about the bulk of the improvements in the neighbourhood. We direct that 25 per cent of the potential value of the land relatable to the improvements made by the appellant would only be available to the respondents, but in fixing market value all other legitimate considerations shall be taken into account. We make it clear that we have no intention to extend the benefit under Section 28-A of the Act to the owners of the lands already acquired under the notification of 1980 or 1985 on the basis of our direction that the respondents' lands shall be deemed to have been notified under Section 4(1) of the Act on January l, 1988. In fact our order must be deemed to be a separate notification for acquisition and, therefore, it would not be a common notification for the purpose of Section 28A of the Act. The respondents should, therefore, be entitled to this benefit that instead of the notification under Section 4(1) of the Act being of 1985, it shall be treated to be of January l, 1988. The appellant authority is now entitled to take position (sic possession) in accordance with law, subject to the valuation of the compensation in the manner indicated."

A perusal of this order would show that a deemed date to the notification under Section 4(1) of the Act was given for the purpose of giving enhanced compensation to the claimants in the appeal and

the notification under Section 6 was kept in tact. It was made clear that the other claimants whose land may have been acquired under the same notification would not be entitled to get enhanced compensation under Section 28A of the Act because of the deemed date of Notification under Section 4(1) given to the appellants.

The appellants thereafter filed Writ Petition No. 1931 of 1993 in the High Court challenging the acquisition proceedings, inter alia, on the ground that subsequent to the order passed by this Court, no notification under Section 6 or an award under Section 11 were made, thereby rendering the acquisition proceedings non-est. The High Court rejected the writ petition holding that decision on these points would amount to reviewing the order of this Court. The appellants were advised to approach the Supreme Court for clarification or modification of the order passed by it.

Thereafter the claimants filed these appeals. The Development Authority has also filed the cross appeal.

Shri Sidharth Shankar Ray, learned senior advocate appearing for the appellants contended that keeping in view the scheme of the Act, the authorities were required to issue a fresh declaration under Section 6 of the Act within one year of the deemed date of notification under Section 4(1) and an award within two years from the date of declaration under Section 6. And if the declaration under Section 6 is taken from the date of rendering of judgment by this Court, i.e., 11th November, 1991 then failure to make the award within two years from that date resulted in the lapsing of the entire acquisition proceedings.

We do not find any force in this submission. The earlier judgment of this Court can be divided into two parts. In the first part this Court set aside the order of the High Court and upheld the acquisition proceedings. In the second portion in order to give more compensation to the owners of land a deemed date was given to the notification under Section 4(1). The deemed date to the notification under Section 4 was given for the benefit of the appellants only and not to any other land owners whose land were acquired. This Court took care to mention that although the price of the land had increased tremendously owing to the improvements made by the development authority after issuance of notification under Section 4 but the appellants would be entitled to only 25% of the potential value of the land relatable to the improvements made by the development authority. The Court after giving a deemed date of notification did not say that from the deemed date given to notification under Section 4, procedure envisaged under the Act of making the declaration under Section 6 or an award under Section 11/11-A was to be followed. Rather the Court gave liberty to the development authority to take possession of the land in accordance with law. Possession could be taken by the authority under Section 16, Fresh declaration under Section 6 was not required to be issued. An award in terms of Section 11/11A of the Act was also not required to be given within two years, as has been contended by the learned senior counsel for the appellants. The direction given by the Court was for redetermination of the compensation only. The amount of compensation was to redetermined keeping in view the deemed date given to the notification under Section 4 and the improvements made by the authorities between 2nd August, 198S (the original date of issuance of notification) and the Ist January, 1988 (the deemed date of notification). The appellants entitlement to the increase in the potential value of the land was limited to 25% only. The

development authority was held entitled to take possession of the land under Section 16 subject to redetermination of the amount of compensation and not subject to the giving of an award in terms of Section 11/11A.

This Court in Mancheri Puthusseri Ahmed v. Kuthir Avattam Estate Receiver, [1996] 6 SCC 185 has held that whenever a deemed date is given by creating a legal fiction than the Court is required to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to give effect to the fiction. While construing the fiction it is not open to the Court to extend the same beyond the purpose for which it was created. It cannot also be extended by importing another fiction. The deemed date to the notification under Section 4 was given by creating a legal fiction for giving enhanced compensation and it has to be limited to that only. It cannot be extended beyond it leading to the issuance of fresh declaration under Section 6 or giving a fresh award under Section 11.

Due to the pendency of the writ petition in the High Court and due to the fact that the proceedings were adjourned before the Land Acquisition Officer nearly 40 times the amount of compensation could not be redetermined at an early date. It was redetermined on 1st January, 1998 and the possession was taken by the authorities on 9th March, 1998.

Shri Ray then argued that the earlier judgment rendered by this Court being against the statutory provisions would be deemed to be a non-est judgment and therefore not binding on the parties. That if it be deemed that this Court decided the earlier case in exercise of its extra-ordinary power under Article 142 of the Constitution even then it is bad in law because the Court cannot exercise its power under Article 142 in the face of express statutory provisions. That the appellants could not be deprived of their property without giving market price for the same. For this he made reference to a number of judgments including the judgment of the Constitution Bench in Supreme Court Bar Association v. Union of India and Anr., [1998] 4 SCC 409. In Particular reference was made to paras 47, 48, 50, 51, 52, 55 & 56 of the said judgment. The submission has no force. In the earlier judgment the Court had upheld the acquisition proceedings but in order to give more compensation to the landowners in that case a deemed date was given to the notification under Section 4. So far as the upholding of the acquisition proceedings is concerned it cannot be held that it is against any statutory provision. That part of the judgment cannot be touched. In any case it is too late to challenge the upholding of the acquisition proceedings in an appeal before a bench of co-ordinate jurisdiction. The other part is of giving deemed date to the notification under Section 4 and limiting the benefits arising therefrom. The same is for the benefit of the claimants-appellants. It would not be in the interest of the appellants to get it set aside. Nor would we like to do it.

For the reasons stated above, we do not find any merit in the appeals filed by the claimants and dismiss the same. The cross appeal filed by the development authority lacks merit and is also dismissed.

Counsel for the appellants then contended that the claimants have not been given any compensation till date. If that be so, the development authority is directed to pay the compensation to the claimants within one month of the date of receipt/production of a certified copy of this order.

It was brought to our notice that the claimants have already filed a reference petition under Section 18 of the Act for claiming enhanced compensation. If that be so, the reference petition be decided in accordance with law keeping in view the directions given by this Court in the earlier judgment dated 14th November, 1991. There will be no order as to costs.

AII the I.A.'s are disposed of as infructuous.