State Of Rajasthan & Ors vs D.R. Laxmi & Ors on 12 September, 1996

Equivalent citations: 1996 AIR SCW 3970, 1996 (6) SCC 445, (1996) 4 SCJ 102, (1996) 3 RAJ LW 54, (1996) 2 LJR 589, (1996) 4 ICC 555, 1997 UJ(SC) 1 445, (1996) 9 JT 327 (SC), (1997) 1 CIVLJ 518, (1997) LACC 21, (1997) 1 MAD LJ 116, (1996) 4 CURCC 118

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
STATE OF RAJASTHAN & ORS.

Vs.

RESPONDENT:
D.R. LAXMI & ORS.

DATE OF JUDGMENT: 12/09/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
FAIZAN UDDIN (J)
G.B. PATTANAIK (J)

ACT:

HEADNOTE:

JUDGMENT:

O R D E R This appeal by special leave arises from the Division Bench Judgment of the High Court of Rajasthan made on September 2, 1985 in W.P. No.602/78. The admitted facts are that the notification under Section 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short, the 'Act') was published in the State Gazette on March 23, 1977 acquiring 31.28 acres of land for defence purpose. Enquiry under Section 5-A was dispensed with in exercise of the power under Section 17(4) of the

Act and declaration under Section 6 was published on April 28, 1976. Possession was taken on May 19, 1977. The award was passed under Section 18 was sought and made in March 1978 to Civil Court for enhancement of the compensation. In September 1978, the respondent filed writ petition in the High Court seeking to quash the notification under Section 4(1) and the declaration under Section 6. The learned single Judge referred the matter to the Division Bench. The Division Bench has held that the acquired land is not an arable or waste land and, therefore, the exercise of the power under Section 17(4) of the Act was bad in law. Substance of the notification under Section 4(1) was not published in the locality. The notification under Section 4(1) did not mention that it was a waste of arable land. On these grounds, the learned Judges have quashed the notification. Thus, this appeal by special leave.

Shri Aruneshwar Gupta, learned counsel for the appellants, has contended that the view of the High Court is clearly erroneous. It is not necessary that notification under Section 4(1) should contain a declaration that the needed land is a waste or arable land. The finding that it is neither nor arable land is not correct so long as the land is capable of cultivation. If no cultivation was made it would still be arable land. Therefore, the view that it is neither waste nor arable land is not correct. It is difficult to accept the entire six acres of land which is now claimed by the respondents was within the compound wall as found by the High Court. The view that substance of the notification was not published in locality was not correct in law without any further discussion on facts or legal principles. Even the finding cannot be well supported by any material on record; in law the High Court was wrong in interfering under Article 226 of the Constitution. Shri Rajinder Sachar, learned senior counsel for the respondents, contended that since the substance of the notification under Section 4(1) was not published which is mandatory, the notification under Section 4(10, and declaration under Section 6 could be challenged at any time even after the award was made or possession was taken. Since publication of the notification under Section 4(1) is the foundation for taking further steps for the acquisition, procedural steps required under the Act should be followed. The substance of the notification under Section 4(1) was not published in the locality. So all the proceedings which had subsequently been taken place stand nullified. Therefore, the Court would in an appropriate case grant the declaration including to quash the award future steps. He also contended that it would be difficult to accept that the lands are arable lands, if not waste land. The finding that the land is arable land is based on consideration of the material on record. Therefore, it is not arable land. Further, it is contended that the respondent had stated in the High Court that he was prepared to accept the compensation provided the date of notification under Section 4(1) was shifted to four five years later to the actual date of the notification under Section 4(1) published on March 23, 1977. He would stand by the same offer and, therefore, it is not a case warranting interference.

The questions, therefore are : (1) whether the notification under Section 4(10 should contain the declaration that the lands are waste or arable lands; (20 whether the exercise of the power under Section 17(4) was vitiated by the finding that the lands were not capable of cultivation being situated in urban area; (3) whether the substance of the notification published under Section 4(1) was not published in the locality; if it not complied with, when the entire acquisition proceedings had become final, whether the High Court was justified in exercising the power under Article 226? It is not necessary to recapitulate all the facts narrated above. Suffice it to state that after the reference

was made to the Civil Court, it passed an award under Section 26 which was challenged by the State by filing an appeal under Section 54 against the enhanced compensation. Thereby, the respondents had accepted the award. The State feeling aggrieved by the enhanced compensation, filed an appeal in the High Court. The High Court, by judgments dated May 5, 1982 and September 23, 1982, dismissed the appeals which became final. Thus, the acquisition proceedings became final.

The question, therefore, as said above, is : whether the High Court is justified in interfering with these matters ? Section 4(10 of the Act does not required to specify the nature of the land, i.e. whether it is arable or waste land. The object of the publication of the notification under Section 4(1) was that (1) the land is needed for a public purpose or is likely to be needed;(2) the officers of the State are authorised to enter upon the land and carry on measurement etc; and (3) the owner/interested person was put on notice that any encumbrance hereafter would not bind State. Therefore, Section 4(1) does not envisage specification of the nature of the land, i.e. whether it is waste or arable land, when the same was published. The view, therefore, of the High Court that the notification under Section 4(1) should contain a declaration of the nature of the land is clearly erroneous.

Second question whether the land is waster or arable, is a mixed question of facts and law. It depends upon the facts in each case. In this case, it is seen that on their own showing, the land of an extent of 6 acres belonging to the respondents was sought to be acquired along with other vast extent of land. It consists of open land as well building and the servant quarters. The award of the Land Acquisition Officer has been placed before us. The building was not acquired for the public purpose but only servant quarters came to be acquired. From this background, the question arises : whether the land is arable land > This question was considered by a Bench of three Judges in Ishwarlal Girdharilal Joshi vs. State of Gujarat [(1968) 2 SCR 267]. After elaborate consideration of the various judgments of the High Courts and dictionary meaning of the words "arable" in that behalf, this Court has relied thus :

> "There is no definition of the word 'arable' in the original Land Acquisition Act. A local amendment includes garden lands in the expression. Now lands are of different kinds : there is waste- land desert-land, pasture-land, meadow land, grass-land, wood-land, marshy-land, hilly land, etc. and arable land. The Oxford Dictionary gives the meaning of 'arable' as capable of being ploughed; fit for tillage ; opposed to pasture-land or wood land and gives the root as arable is in Latin. The learned Judges have unfortunately not given sufficient attention to the kinds of land and the contrast mentioned with the meaning. Waste-land comes from the Latin vastitas or vastus (empty, buildings). It was always usual to contrast vastus within incultus (uncultivated) as in the phrase 'to lay waste' (agri vastate). A meadow or pasture-land is pratum and arable is arvum and Cicero spoke of prata et arva (meadow and arable lands). Grass- land is not meadow or pasture-land and in Latin in known as campus as for example the well-known Campus Martius at Rome, where the comitia (assembly of the Roman people) used to meet. Woodlands is silvae, nemora or saltus."

This was considered also be the Constitution Bench in Raja Anand Brahma Shah vs. The State of Uttar Pradesh & Ors. [AIR 1967 SC 1801]. In that case, the acquired lands were mineral lands for mining purpose. Therefore, the question arose; whether they were arable lands ? On the facts of this case, the Constitution Bench came to the conclusion that since they were not arable lands, the exercise of the power under Section 17(4) was not justified in law. In view of the fact that the Act itself has considered as to when the land could be considered to be arable land; as explained by this Court, the interpretation put up in Ishwar Lal's case is in the correct perspective. The Court has power t consider the question in that light. In considering the question whether the land is arable or waste, dictionary meaning does not help the Court to solve the problem. Pragmatic approach is required to be adopted in considering the question on the facts in each case. Though the lands in this case situated in urban area, the Urban Land Ceiling Act itself recognises existence of the agricultural lands within the urban agglomeration and they are dealt with accordingly. When the lands were capable of the raising crops, they remained to be arable under Section 17(4) by the Government was not bad in law. On facts, it is an arable land capable to cultivation. It is quarter as part of a large area, including six areas of respondent's lands, it cannot be said that the ret of the land is occupied by the buildings or is within the compound though situated in urban area. The view of the High Court, therefore, was clearly erroneous.

The question is : whether the absence of the publication of the substance of the notification in locality renders the entire proceedings void? We need not dilate upon the question whether local publication of substance of Section 4(1) notification is mandatory or directory. Since this Court has consistently taken the view that compliance of the requirement of the publication of the notification under Section 4(1) in the Gazette as well as publication of the substance of the notification in the locality now under the Amended Act in the newspaper, is mandatory requirement. As the facts are not in controversy, as mentioned in the judgment of the High Court, the substance of the notification was not published in the locality; we proceed on the premise that second step, namely, publication of the substance of the notification in the locality, was not taken. The question then is : whether Section 4(1) notification and Section 6 declaration are required to be quashed ? In this regard, we have to consider the conduct of the parties and the effect thereof. Under the scheme of the Act, after the possession of the land was taken either under Section 17(2) or Section 16, the land stands vested in State free from all encumbrances. Thereafter, there is no provision under the Act to divest the title which was validly vested in the State. Under Section 48(1) before the possession is taken, the State Government is empowered to withdraw from the acquisition by its publication in the Gazette. In this regard, a three-Judge Bench of this Court has considered the question in Sanjeevanagar Medical & Health Employees' Co-operative Society v. Mohd. Abdul Wahab & Ors. [(1996) 3 SCC 600] and held in paragraphs 12 thus :

> "That apart, as facts disclose, the award was made on 24.11.1980 and the writ petition was filed on 9.8.1982. It is not in dispute that compensation was deposited in the Court of the Subordinate Judge. It is asserted by the appellant Society that possession of the land was delivered to it and the land had been divided and allotted to its members for construction of houses and that construction of some houses had petition was filed. It would be obvious that the question of division of the properties among its members and allotment of the respective plots to them would arise only

after the Land Acquisition Officer had taken possession of the acquired land and handed it over to appellant Society. By operation of Section 16, the land stood vested in the State free from all encumbrances.

In Satendra Prasad Jain v. State of U.P.[(1993) 4 SCC 369], the question arose: whether notification under Section 4(1) and the declaration under Section 6 gets lapsed if the award is not made within two years as envisaged under Section 11-A? A Bench of three Judges had held that once possession was taken and the land vested in the Government, title to the land so vested in the State is subject only to determination of compensation and to pay the same to owner. Divesting the title to the land statutorily vested in the Government and reverting the same to the owner is not Section 48(1) gives power to withdraw from acquisition that too before possession is taken. That question did not arise in this case. The property under acquisition having been vested in the appellants, in the absence of any power under the act to have the title of appellants divested except by exercise of the power under Section 48(1), valid title cannot be defeated. The exercise of the power to quash the notification under Section 4(1) and the declaration under Section 6 would lead to incongruity.

Therefore, the High Court under those circumstances should not have interfered with the acquisition and quashed the notification and declaration under Section 4 and 6 respectively. Considered from either perspective, we are of the view that the High Court was wrong in allowing the writ petition.

In Satinder Prasad Jain's case, another Bench of three Judges had held that though award under Section 11-A was not within two years after the Amendment Act 68 of 1984 came into force, the title having been vested in the State, the notification under Section 4(1) and declaration under Section 6 do not get lapsed and non-compliance of statutory provisions does not have the effect of divesting the title of the land vested in the Government free from all encumbrances.

Recently, another Bench of this Court in Municipal Corporation of Greater Bombay Vs. Industrial Development & Investment C. (P) Ltd. [C.A. No. 282 of 1989] decided on September 6, 1996 reexamined the entire case law and held that once the land was vested in the State, the Court was not justified in interfering with the notification published under appropriate provisions of the Act. Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of latches. It is thus, well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the

award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition or the ground of latches. Reliance was placed by Shri Sachar on M.P. Housing Board v. Mohd. Shafi & Ors. [(1992) 2 SCC 168] in particular paragraphs 8, wherein it was held that compliance of the requirements is mandatory and non-compliance thereof renders all subsequent proceedings connected therewith unexceptionably illegal ; but the question is what will be its effect. That was not the question in that case, since no award had come to be passed in Nutakki Sesharatanam v. Sub-Collector, L.A., Vijaywada [(1992) 1 SCC 114] a two-Judge Bench of this Court had held that if the requirements of Section 4 are not complied with, all proceedings had become invalid and possession was directed to be re-delivered to the appellant. We are of the view that the ratio therein is not correctly laid down. The question whether violation of the mandatory provisions renders the result of the action as void or voidable has been successfully considered in "Administrative Law" by H.W.R. Wade [7th Edition] at page 342-43 thus :

"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another. A common case where an order, however void, becomes valid is where a statutory time limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result."

The order or action, if ultra vires the power, it becomes void and it does not confer any right. But the action need not necessarily set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is seen that the acquisition has become final and not only possession had already been taken but reference was also sought for ; the award of the Court under Section 26 enhancing the compensation was accepted. The order of the appellate court had also become final. The order of the appellate court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in quashing the notification under Section 4 [1] and declaration under Section 6.

It is true that the respondent had offered to accept the compensation by shifting the date of the notification by 4 to 5 years from the date of the notification under Section 4(1). For this view, reliance was placed by Shri Sachar on the judgment of this Court in Ujjain Vikas Pradhikaran v. Raj Kumar Johri & Ors. [(1992) 1 SCC 328] where this Court had allowed the shifting of the date for the determination of the compensation. In that case since the award had not been passed, this Court had given the direction but in this case award determining the compensation has attained finality. It is not a case to shift the date for the determination of the compensation. Thus considered, we are of the view that the High Court was not justified in interfering with the notification and declaration under Section 4(1) and 6.

The appeal is accordingly allowed. The judgment of the High Court stands set aside. The writ petition stands dismissed but, in the circumstances, without costs.