The Zandu Pharmacutical Works Ltd. vs G.J. Desai on 28 August, 1969

Equivalent citations: 1969(2)UJ575(SC), AIRONLINE 1969 SC 173

JUDGMENT

Ramaswami, J.

1. The appellant was the owner of certain im-moveable properties in Bombay bearing City Survey Nos. 1150, 1148, 1149/1, 1149/2, 1302, 1153, 1157 and 1154 of the Mahim Division of Bombay. On June 25, 1951 the Municipal Corporation of Bombay (hereinafter referred to as "the Corporation") published a declaration of its intention to prepare a Town Planning Scheme in respect of the Mahim Area of the City of Bombay. The said declaration was made under Section 4 of the Bombay Town Planning Act 1915 (Bombay Act 1 of 1915) (hereinafter referred to as "the 1915 Act"). On or about August 12, 1954 the Corporation prepared and published a draft scheme in the Bombay Government Gazette, known as "the Town Planning Scheme, Bombay City No. IV, Mahim area". Shri G.J. Desai, the 1st respondent was appointed as the Arbitrator for the said scheme. On or about February 18, 1957 the 1st respondent served a notice on the appellant under the provision of the 1915 Act, informing the appellant that the Corporation proposed to alter the areas and boundaries of the lands belonging to the appellant in the manner set out therein and called upon the appellant to appear before him and raise any objection or suggestion in respect of the aforesaid proposals of the Corporation. The proposals of the Corporation had resulted in the appellant being granted a final plot being final plot no. 396, instead of the lands originally held by it, which are described as Original Plot No. 355. The area of the appellant's lands originally held was 12,498.45 sq. yds. The area of the final plot was 13,691 sq. yds. The Corporation proposed the value of the original plots, as from the date of the declaration of intention to be Rs.30/- per sq. yds., the undeveloped value of the final plot to be Rs.32/- per sq. yds., and the developed value of the final plot to be Rs.57/- per sq. yd. In addition, the Corporation also proposed certain figures for the valuation of the structures standing on the original plots as well as on the final plot. By reason of the fact that the plots being allotted to the appellant had a larger area than the plots originally held by them, the appellant became liable to pay a contribution amounting to Rs. 36,891/-. The appellant was also liable to pay an increment, under Section 17 of the 1915 Act and the said increment amounted to the difference between the developed value of the final plot and the undeveloped value of the same and the total amount of such increment amounted to Rs. 3,42,275/- The Corporation proposed that 50% of the said amount amounting to Rs. 1,71,138/- was to be recovered from the appellant as incremental charges under the provisions of Section 18 of the said Act. By its letter dated September 7, 1957 the appellant urged several objections to the proposal of the Corporation. But the appellant did not appear before the 1st respondent inspite of notice being given to it. The first respondent, however, considered the objections of the appellant and several objections of the appellant were wholly or partly allowed and he published the final scheme on or about February 24, 1962. The appellant

received a copy of the extract of the said scheme, in so far as it pertained to the lands of the appellant on or about March 24, 1962. In the said final scheme the area of the lands originally held by the appellant was correctly shown as being 17, 442 sq. yards and the same were numbered as original plots Nos. 335, 335A and 335B. The final plots awarded to the appellant were numbered 1025 and 1028. The area of the final plots in the aggregate amounted to 17,712 sq. yds. The 1st respondent accepted the proposal of the Corporation that the value of the original plots should be fixed at Rs. 30/- per sq. yd. As far as the undeveloped value of the final plots were concerned the 1st respondent accepted the objections urged by the appellant and took the same to be Rs. 30/- per sq. yd. instead of Rs. 32/- per sq. yd. proposed by the Corporation. Similarly, the 1st respondent partially accepted the submission of the appellant as to the developed value proposed by the Corporation was Rs. 57/- per sq.yd. As result of the decision of the 1st respondent, the appellant became entitled to an additional area of 269.59 sq. yds. and it was obliged to contribute to the cost of the same the sum of Rs. 8,087/-. The 1st respondent fixed the contribution of the appellant towards the costs of the scheme at 50 of the increment and the same came to Rs. 88,560/-. As a result of the decision of the 1st respondent, the appellant became liable to pay by way of contribution the total sum of Rs. 96,647.

2. On April 1, 1957 the 1915 Act was repealed by the Bombay Town Planning Act, 1954 (27 of 1955) (hereinafter referred to as "the 1954 Act"). Section 90 of the 1954 Act provided that all proceedings and schemes commenced under the 1915 Act came into force were to be continued and completed under the provisions of the 1954 Act.

3. Aggrieved by the decision of the 1st respondent, the appellant preferred an appeal to the Board of Appeal constituted under Section 35 of the 1954 Act on August 27, 1962. The appeal was rejected by the Board on September 7, 1962 as the same had been made beyond the time prescribed by Section 34 of the 1954 Act. The appellant thereafter filed a writ petition in the High Court of Bombay on September 10, 1962. The said petition, along with certain other petitions in which substantially the same questions were raised, was heard by the Division Bench of the Bombay High Court which by its judgment dated December 11, 1964 rejected the submissions of the appellant and dismissed the writ petition. This appeal is brought by certificate from the judgment of the Bombay High Court dated December 11, 1964.

4. In State of Gujarat v. Shantilal Mangaldas (1) it was held by this Court that Sections 53 of 67 of the 1954 Act regarded as law for acquisition of land for public purposes do not infringe the fundamental right under Article 31(2) of the Constitution because the Act has specified principles on which compensation is to be determined and given. It was also pointed out that in the scheme of the 1954 Act there was no acquisition by the State Government of land needed for a town planning scheme. When the Town Planning Scheme comes into operation the land needed by a local authority vests by virtue of Section 53 (a) . . and that vesting for purposes of the guarantee under Article 31(2) is deemed compulsory acquisition for a public purpose. To lands which are subject to the scheme, the provisions of Sections 53 and 67 apply, and the compensation is determined only in the manner prescribed by the Act. There are therefore two separate provisions one for acquisition by the State Government, and the other in which the statutory vesting of land operates as acquisition or the purpose of town planning by the local authority. The State Government can acquire the land under

the Land Acquisition Act, and the local authority only under the Bombay Town Planning Act. There is no option to the local authority to report to one or the other of the alternative method which result in acquisition. Hence the provisions of Sections 53 and 67 are not invalid on the ground that they deny the equal protection of the laws or equality before the laws.

5. In the present appeal it was urged on behalf of the appellant that the counsel was stopped by the High Court from arguing the question of valuation and also the question regarding the validity of certain provisions of the 1954 Act on the ground that his appeal filed before the Board of Appeal was barred by limitation. By its order dated January 13. 1969 the Constitution Bench of this Court directed that the appellant will not be entitled to argue the question of valuation because he did not file an appeal before the Board of Appeal within the period of limitation prescribed by the 1954 Act; but the appeal was directed to be '"set down for hearing on such argument as counsel desired to urge before the High Court the question which arises out of the petition.

6. Section 32 of the 1954 Act states:

> "(1) In accordance with the prescribed procedure the Town Planning Officer shall,-
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> .....
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> (vi) calculate the contribution to be levied on each plot used, allotted or reserved for a public purpose or purpose of the local authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public;

.....

(ix) calculate the proportion in which the increment of the plots included in the final scheme shall be liable to contribution to the costs of the scheme in accordance with the provisions contained in Section 66;

(x)

(x) calculate the contribution to be levied on each plot included in the final scheme;

.....

(xiii) estimate in reference to claims made before him, after the notice given by him in the prescribed manner, the compensation to be paid to the owner of any property or right injuriously affected by the making of a town-planning scheme in accordance with the provisions contained in sec-

tion 69;

.....

Section 34 provides as follows :

> "Any decision pf the Town Planning Officer under Clauses (v), (vi), (viii), (ix), (x), and (xiii) of Sub-section (1) of Section 32 shall be forthwith communicated to the party concerned and any party aggrieved by any such decision, may, within one month from the date of the communication, of the decision present an appeal, in Greater Bombay to the Principal Judge of the City Civil Court, Bombay and elsewhere to the District Judge for decision of the appeal by & Board of Appeal constituted under Section 35; and on receipt of an appeal as aforesaid the Board of Appeal shall, as soon as may be, be constituted as hereinafter provided, and shall hear and decide the appeal."

7. In support of the present appeal Mr. Shroff confined himself to the argument that the decision of the Town Planning Officer dated February 24, 1962 was a non-speaking order and hence of the decision was ultra vires and should be set aside. It was contended that the reasons in support of the decision were not communicated to the appellant and the right of appeal provided under Section 34 was therefore an illusory right. It was said that Section 32 contemplated by necessary implication that the Town Planning Officer must give his reasons hi writing in judging the validity of the objections to the approved scheme. In our opinion there is no substance in the argument put forward on behalf of the appellant. We shall assume in favour of the appellant that Section 32 contemplates by necessary implication that the Town Planning Officer must give his reasons for his decision under Sub-section (1) of Section 32, It appears, however in the present case that fhe reasons were in fact furnished by the Town Planning Officer in the final scheme which was published under Section 28 of the 1954 Act. It is true that the reasons were not set out in the extract of the final scheme sent to the appellant on May 24, 1962. But it was noted in this extract that a copy of the final scheme was available for inspection in the office of the Arbitrator) at Kamani Chambers, Nicol Road, Rallard Estate, Fort, Bombay 1 during office hours. It was, therefore, open to the appellant to go to the office of the Arbitrator and ask for inspection of the final scheme. If the appellant did not avail himself of this opportunity it is not open to him to advance the argument that the final scheme is ultra vires because the reasons were not communicated to him by the Arbitrator on February 24, 1962. In our opinion there is no violation of the principle of natural justice in this case and the final scheme published by the Arbitrator on February 24, 1962 cannot be held to be defective in law.

8. For these reasons we hold that this appeal is without merit and must be dismissed with costs.