

Supreme Court of India

The Administrator ... vs Ramji Lal Bagla And Others on 26 July, 1995

Equivalent citations: 1995 AIR 2329, 1995 SCC (5) 272

Author: B Jeevan Reddy

Bench: Jeevan Reddy, B.P. (J)

PETITIONER:

THE ADMINISTRATOR MUNICIPALCOMMITTEE CHARKHI DADRI ANDANOTHE

Vs.

RESPONDENT:

RAMJI LAL BAGLA AND OTHERS

DATE OF JUDGMENT26/07/1995

BENCH:

JEEVAN REDDY, B.P. (J)

BENCH:

JEEVAN REDDY, B.P. (J)

SEN, S.C. (J)

CITATION:

1995 AIR 2329

1995 SCC (5) 272

JT 1995 (5) 486

1995 SCALE (4)559

ACT:

HEADNOTE:

JUDGMENT:

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

Leave granted.

This appeal is preferred against the Judgment of the Punjab and Haryana High Court allowing the writ petition filed by the respondents on the ground that the point raised in the writ petition is clearly covered in favour of the writ petitioners-respondents by the ratio of the Full Bench decision of that Court in Nawal Singh v. The Administrator, Municipal Committee, Charkhi Dadri and others [A.I.R.1984 (Vol.71) Punjab and Haryana 61].

A notification under Section 42 of the Punjab Town Improvement Act, 1922 (as applicable to the State of Haryana) was issued proposing to acquire approximately 46.51 acres of land within the boundaries of Charkhi Dadri Municipality for implementing a scheme (No.1-B) prepared by Charkhi

Dadri Improvement Trust under Section 24 read with Section 28(2) of the Act. It was published in the Haryana Government Gazette Part 1-A dated February 6, 1976. The scheme contained in the Notification is an elaborate one. It is in several parts. It sets out inter alia the boundaries of the land proposed to be acquired. Part I defines several expressions occurring in the scheme. Part II states that the area (covered by the scheme) proposed to be acquired will be laid out and developed as indicated in the zoning plan and the lay out plan. It specifies the several areas of the land reserved for several general and special purposes mentioned therein. Part III contains "building restrictions, type of buildings permitted". It sets out elaborately the conditions and requirements to be observed in the construction of the buildings. Part IV, titled "Miscellaneous" states that the requirements of this schedule shall be in addition to the requirement of any by laws and Local Act. It also empowers the Trust to relax any provisions of the Scheme with the prior sanction of the Government.

Pursuant to the above Notification/Scheme, proceedings were initiated for acquiring the requisite extent of the land and an award passed on November 3, 1976. The compensation determined under the award was also paid to the persons interested in the land acquired. Possession of the land was also taken by the Improvement Trust on January 19, 1977.

Section 44-A (added by the Haryana Legislature) of the Act provides that "any scheme in respect of which a notification has been published under Section 42 shall be executed by the Trust within a period of five years from the date of such notification." The proviso to the Section however empowers the State Government to extend the said period if it is satisfied that for reasons beyond the control of the Trust, the scheme could not be executed within the said period of five years. Inasmuch as the aforesaid scheme 1-B could not be executed within the said period of five years, the Trust (Administrator Municipal Committee, Charkhi Dadri) applied for extension of the scheme upto 5th February, 1983. It appears that no orders were passed thereon by the Government.

On March 14, 1983 the respondents filed Writ Petition No.1542 of 1983 (from which the present appeal arises) for the issuance of an appropriate writ, order or direction quashing the scheme aforesaid on the ground that the scheme not having been executed within the period of five years specified in Section 44-A, the scheme fails and is liable to be quashed. It was further prayed that the respondents to the writ petition (appellants in this appeal) be restrained from dispossessing the writ petitioners from the land and the houses in their possession in pursuance of the said scheme. This writ petition was allowed under the order impugned herein in terms of the Full Bench decision as stated above.

Learned counsel for the appellants, Shri Dhruv Mehta, submitted that once the award is passed and possession is taken of the land acquired pursuant to the scheme, the title to the land vests in the Trust and that non-completion of the scheme within the period of 5 years specified in Section 44-A cannot have the effect of invalidating the scheme and/or nullifying the acquisition of the land which has become final. Learned counsel called upon to refund the amount of compensation, if any, received by them.

The Punjab Improvement Act was enacted in the year 1922 to make provision for the improvement and extension of towns in the State of Punjab. It was enacted with the previous sanction of the

Governor General under Section 80-A (3) of the Government of India Act, 1919. Section 2 defines certain expressions occurring in the Act. Chapter-II comprising Sections 3 to 11-A provides for constitution of Trusts and matters incidental thereto while Chapter-III (comprising Sections 12 to 21-A) contains provisions regulating the proceedings of the Trusts and the Committees constituted under the Act. Chapter-IV provides for preparation and publication of and other particulars concerning the schemes to be prepared under the Act. Sections 22 to 27 provide for the preparation of development schemes and rehousing schemes while Section 28 prescribes the matters which may be provided for in such schemes. Sections 29 to 31 provide for matters incidental to the Improvement schemes. Section 36 provides inter alia for publication of the scheme so prepared. Section 38 provides that during the thirty days next following the first day on which any notice is published under Section 36 in counsel submitted that there are no words in Section 44-A which purport to do so nor are there any words therein which purport have the effect of nullifying the acquisition or to convey the title back to the erstwhile owners. If that was the intention of the Legislature, counsel submitted, it would have used clear and specific language providing for the said consequences. As it now stands, Section 44-A is only directory in nature and not mandatory, says the counsel. He also disputed the correctness of the Full Bench decision in Naval Singh. Mr. Prem Malhotra, learned counsel for the respondents, on the other hand, supported the reasoning and conclusion of Naval Singh and submitted that having regard to the purpose and object underlying Section 44-A, it must be deemed to be a mandatory provision. On the expiry of the five-year period (or the period of extension granted by the Government under the proviso to the said Section, if any) the scheme becomes inoperative and cannot be enforced any longer. Once the scheme fails, the acquisition of land acquired for the purpose of executing the said scheme cannot survive. It also falls to ground, which means that the land which has not been utilised for the purpose of the scheme, has to be returned to the erstwhile owners, who can of course be notification under sub-section (1) of Section 42 in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned. The proviso, added later, says that "no notice in respect of sanction of a scheme shall be issued after the expiry of three years from the date of first publication of notice relating to that scheme under Section 36". Section 43 provides for alteration of the scheme by the Government at any time before its execution. Section 43-A (Haryana Amendment) empowers the Government to change the purpose for which the scheme has been framed. Section 44 is clarificatory in nature. It provides that "(A)ny number of localities in respect of which the trust has framed or has proposed to frame schemes under this Act may, at any time, be included in one combined scheme." Section 44-A, added by Haryana Legislature - and which is of crucial relevance herein - says that "(A)ny scheme in respect of which a notification has been published under section 42, shall be executed by the trust within a period of five years from the date of such notification." The proviso to the Section reads: "(P)rovided that the State Government may, if it is satisfied that it is beyond the control of the trust to execute the scheme within the said period, extend the respect of any scheme under the Act, the trust shall serve individual notices on every owner and occupier of the immovable property which is proposed to be acquired for the purpose of executing the scheme. Such notice must state that the trust proposes to acquire such property for the purpose of carrying out the scheme under the Act and require such person, if he objects to such acquisition, to state his reasons in writing within a period of thirty days from the date of service of such notice. Section 40 provides that after considering the objections filed and after hearing the objectors who may desire to be heard, the Trust may either abandon the scheme with the approval of the State Government or

apply to the State Government for sanction of the scheme with such modifications as it may deem necessary. Section 41 provides that upon receiving the recommendation of the Trust, the State Government may sanction the scheme with or without modifications or may refuse to sanction the scheme or may return it for reconsideration of the Trust. If the State Government chooses to sanction the scheme, Section 42 provides that it shall notify the sanction of such scheme and that thereupon the Trust shall proceed forthwith to execute the scheme. Sub-section (2) declares that a same as it may deem fit."

Chapter-V sets out the powers and duties of the Trust where a scheme has been sanctioned. Section 45 provides that where any building, street or other land vested in the Municipal Committee is required for executing a scheme under the Act, the Trust shall give notice of the same to the president of the Municipal Committee whereupon such building, street or other land shall vest in the Trust. Section 46 prescribes the procedure to be followed where a private street not vested in the Municipality is required for executing the scheme and how it should be transferred to the Trust. The remaining provisions in Chapter-IV are in the nature of machinery provisions and need not be referred to for the purpose of this case. Chapter V-A added by Haryana Legislature also need not be referred to.

Chapter-VI provides for acquisition of land required for executing the scheme and for matters connected therewith. Section 56 provides the procedure following which any person, whose land is proposed to be acquired for executing a scheme, can apply for deleting his land from the acquisition. This can be done "before the Collector has taken possession of the land under Section 16 of the Land Acquisition Act, 1894" but not thereafter. Section 57 provides that such deletion shall not prevent the acquisition of that land at a subsequent point of time if required for any of the purposes of the Act. Section 58 says that "(A) tribunal shall be constituted as provided in Section 60, for the purpose of performing the functions of the Court in reference to the acquisition of land for the trust, under the Land Acquisition Act, 1894". Section 59(a) provides that "for the purpose of acquiring land under the Land Acquisition Act, 1894 for the trust, the Tribunal shall (except for the purposes of Section 54 of the said Act) be deemed to be the Court and the President of the Tribunal shall be deemed to be the Judge under the said Act". Clause

(b) of Section 59 provides that the Land Acquisition Act shall apply to the acquisition of land required for the Trust subject to the modification set out in the Schedule to the Act. Clause (c) sets out the powers of the Tribunal while Clause (d) declares that "the award of a Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894 and shall be final". Section 60 provides for the constitution of the Tribunal. Section 65 prescribes the procedure to be followed by the Tribunal in case of disagreement between members in the matter of measurement of land and the amount of compensation, while clarifying the scope and extent of the powers of the President of the Tribunal.

The Schedule to the Act provides the modifications subject to which the Land Acquisition Act is made applicable for the purpose of acquiring the land for executing the schemes. While it is not necessary to notice the several provisions in the Schedule, reference is necessary to Clause 6 of the Schedule, which adds a new Section, Section 17-A in the Land Acquisition Act. The new section

reads:

"17-A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the trust, and the land shall thereupon vest in the trust subject to the liability of the trust to pay any further costs which may be incurred on account of its acquisition."

Clause (14) of the Schedule has introduced Section 48-

A. It provides for payment of compensation where an award is not passed within one year of the declaration of Section 6.

A perusal of the above provisions makes it clear that the land required for executing a scheme framed under the Act can be acquired by the Trust in accordance with the provisions of Land Acquisition Act, 1894 as modified by the Schedule to the Act. It is further clear that the Tribunal created under Section 60 of the Act takes the place of the Court under the Land Acquisition Act. It is equally clear that where the compensation is paid and land is made over to the Trust, the land vests in the Trust - which means that the title to the land gets transferred from the owners of the land to the Trust. The precise question that arises in this appeal is where a land has been acquired pursuant to and for implementation of a scheme framed under the Act and has vested in the trust, whether the said acquisition becomes invalid and void in case the scheme is not implemented within the period of five years prescribed by Section 44-A and whether the land remaining unutilised at the end of the period prescribed in Section 44-A is liable to be restored to the erstwhile owners/persons interested and if so what are the other consequences that follow. In this case, it may be noticed, the respondents' land was acquired in accordance with the provisions of the said Act read with the provisions of the Land Acquisition Act, 1894 and an award passed on November 3, 1976. The compensation determined thereunder was also paid to the persons interested in the land and possession of the land so acquired was made over to the Trust on January 19, 1977. Since possession was taken pursuant to the award and payment of compensation, the title to the land vested in the Trust and the title of the owners came to an end. It is equally an undisputed fact that the scheme could not be implemented in full within the period of five years specified in Section 44-A. It does not also appear that the said period was extended in any manner by the Government. The assumption underlying the Judgment under appeal - though not articulated as such - is that some portions of the land acquired remain(s) unutilised. We assume it to be so for the purposes of this case, though not recording a finding to that effect. The question is whether in such a case, the acquisition of land remaining unutilised at the end of the period specified in Section 44-A becomes void and whether such unutilised portion or portions of the land, is/are liable to be restored to its/their erstwhile owners and/or persons interested? This involves the question whether Section 44-A is mandatory or merely directory. For the sake of convenience, we may set out the Section 44-A in full:

"44-A. Time limit for execution of scheme. - Any scheme in respect of which a notification has been published under section 42, shall be executed by the trust within a period of five years from the date of such notification.

Provided that the State Government may, if it is satisfied that it is beyond the control of the trust to execute the scheme within the said period, extend the same as it may deem fit."

In our considered opinion, Section 44-A cannot be held to be mandatory in the sense that non-compliance with it leads to nullification of the acquisition which has already become final. Such non-compliance cannot also result in divesting of title of the Trust nor is there any obligation to restore the unutilised portion(s) of land to its erstwhile owners/persons interested. The reasons are the following :

(a) The Section while using the expression "shall" does not provide the consequence of non-compliance with its requirement. One of the well-accepted tests for determining whether a provision is directory or mandatory is to see whether the enactment provides for the consequence flowing from non-compliance with the requirement prescribed. *Manbodhan Lal Srivastava v. State of U.P.* (A.I.R. 1959 S.C.

912). The proviso to Section 44-A empowers the Government to extend the said period. The proviso does not prescribe the outer limit beyond which extension cannot be granted. Nor does it indicate in any manner that the said power can be exercised by the Government only once and no more.

A question may then arise, why was the proviso put in at all? What purpose it seeks to achieve, if not to give a mandatory character to the requirement in the main limb of Section 44-A? Having regard to the totality of circumstances (including those mentioned under (b) and (c) occurring hereinafter) we are of the opinion that it appears to be a form of governmental control over those statutory bodies. If the trust does not execute the scheme within the period of five years - and the Government does not see sufficient reason to extend time therefor - the Government may take any of the steps contemplated by Chapter-VA, which chapter was introduced by the Haryana Legislature by the very same Amendment Act (17/1973) which introduced Section 44-A. Chapter V-A vests in the Deputy Commissioner the power of control over the trusts. Section 55-A empowers the Deputy Commissioner to call for information, statements, accounts and reports from the trusts and to enquire generally into their working and affairs. Section 55-B confers upon the Deputy Commissioner the power to suspend any resolution or order of the trust. More important, Section 55-C empowers the Deputy Commissioner to provide for performance of duties in case of default of the trust in performing its duties. Section 55-C reads as follows:

"55-C. Power to provide for performance of duties in case of default of trust.-(1) When the Deputy Commissioner after due enquiry, is satisfied that a trust has made default in performing any duty imposed on it by this Act, or by any order or rule made under this Act, he may, by an order in writing duly supported with reasons fix a period for the performance of the duty; and should it not be performed within the period so fixed, he may appoint some person to perform it, and may direct that the expenses thereof shall be paid, within such time as he may fix, by the trust. (2) Should the expense be not so paid, the Deputy Commissioner may make an order directing the person having the custody of the balance of the trust fund to pay the

expense, or so much thereof, as may from time to time be possible, from that balance in priority to all other charges against the same."

The section is self-explanatory and needs no elaboration at our hands. Section 44-A has to be read and understood along with this section which means that the Deputy Commissioner will have to take action under Section 55-C, in case of the failure of the trust to execute the scheme within the period of five years. If the time is extended under the proviso and yet the trust fails to execute the scheme within the extended time, the Deputy Commissioner can - ought to - resort to Section 55-C. Sections 55-D and 55-E make the acts and orders of the Deputy Commissioner subject to Government's order. It, therefore, cannot be said that Section 44-A or its proviso

(b) The more important and substantial reason, of course, is that Section 44-A does not provide expressly or by necessary implication that non-compliance therewith results in nullification of the acquisition or in the divesting of title of the Trust or that on such non-compliance, the land acquired has to be restored to its erstwhile owners/claimants. It does not also provide, what should happen to the compensation already received by them. Evidently all these aspects could not have been left to be inferred. These are very vital matters and not matters of mere procedure. The divesting of title is a matter of substance and not a formality. So is the restoration of land, return of compensation received, interest, if any, to be paid on such returned amount, compensation for any development and improvements, if any, made on the land by the Trust within the period aforesaid. Absence of any provision for the above matters, in our opinion, shows conclusively that the provision in Section 44-A is only directory notwithstanding the use of expression "shall" therein. The said provision is meant to impress upon the Trust and its authorities, the desirability of the time- frame within which the schemes should ordinarily be executed. But to construe the said admonition as leading to the consequences suggested by the respondents' counsel would amount not only to reading words into the Section which are not there but to reading a whole lot of substantive and procedural provisions into it which the legislature has not thought fit to provide for. Acceptance of the contention urged by the learned counsel for the respondents would entail several complications and situations for which there is no provision in the Act. According to the learned counsel only the land which has not been utilised for the scheme is liable to be restored to its erstwhile owners, but not the land which has already been utilised. A question arises what is 'utilisation'? Suppose, a road is laid and other amenities provided but the construction of buildings contemplated by the scheme has not taken place. Is it a case of utilisation or not? It may also happen that the nature and character of the land has been changed after acquisition. If so, the question arises whether the land has to be restored to its original owners in the condition in which it was acquired or in the condition in which it is on the expiry of the prescribed period or in the condition in which it is at the time of restoration. What about refund of compensation already received by the erstwhile owners? Whether they are liable to pay any interest thereon or whether they are entitled to any damages for the deprivation for the period they have been kept out of possession? These are only a few problems which may arise and are mentioned only to emphasise that not providing for all these matters is a sure indication of the provision in Section 44-A not being mandatory in the sense it is sought to be understood by the respondents.

(c) Yet another feature to be noticed is the placement of the Section 44-A. It occurs in Chapter IV which provides for preparation and publication of the schemes under the Act. Chapter-V speaks of powers and duties of the Trust where a scheme has been sanctioned and Chapter VI contains provisions relating to acquisition of land required for execution of the scheme and other incidental matters. If the legislature intended to say that failure to execute the scheme within the time prescribed in Section 44-A leads to nullification of acquisition with all the attendant consequences, the Section should have found its place in Chapter VI - and with specific and clearer language.

Learned counsel for the respondents, however, places strong reliance upon the Full Bench decision of the Punjab and Haryana High Court in Naval Singh. We have perused the said decision does not deal with, or take into consideration, what according to us are, the several substantial and relevant factors. In our respectful opinion, the non-consideration of the said aspects, detracts from the authority of the said decision. It is true that Section 44-A is one of the provisions which seeks to safeguard the interest of the owners of the land required for executing the schemes framed under the Act, but that does not mean that it must be given a meaning and content which it was never intended to comprehend and the language whereof is totally inadequate to mean what is sought to be attributed to it. A provision has to be read and understood in the context of the entire scheme of the enactment. We are therefore unable to agree with the said decision and accordingly over-rule it. Certain other decisions of the Punjab and Haryana High Court have also been brought to our notice but we do not think it necessary to deal with all of them in the light of the conclusion arrived at hereinabove which, we may reiterate, is confined to situations where the land has been acquired and the title has vested in the Trust.

For the above reasons, the appeal is allowed. The Judgment and order under appeal is set aside. There shall be no order as to costs.