Supreme Court of India
Nasik Municipal Corporation vs Harbanslal Laikwant Rajpal & Ors. ... on 9 December, 1996
Bench: K. Ramaswamy, G.T. Nanavati

PETITIONER:
NASIK MUNICIPAL CORPORATION

Vs.

RESPONDENT:
HARBANSLAL LAIKWANT RAJPAL & ORS. ETC.

DATE OF JUDGMENT: 09/12/1996

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

with Civil Appeal No..16851..../96 (Arising out of SLP (C) No.9487/95) O R D E R Leave granted.

These appeals by special leave arise from the judgment of the Division Bench of the Bombay High Court dated October 14, 1994, made in W.P. Nos.4023/89, Proceedings were initiated under the Maharashtra Regional & Town Planning Act, 1966, (for short, the 'Act'), for framing a scheme and for acquisition of the land in that behalf. The Final Development Plan was made on November 29, 1980. Notification under section 126(4) of the Act was published on August 6, 1987. It. was published in the local newspaper on July 18, 1987 and in the village Chavadi on September 25, 1987. It would appear that subsequently, after Section 4(1) notification and declaration under Section 6 of the (Land Acquisition Act 1/1894) were published, notice was issued under Section 9 of the said Act on September 16, 1989. Award came to be passed on September 22, l989. The respondents filed writ petitions on September 25, 1989. The award was published on September 27, 1989. It would appear that the Draft Plan was issued for reservation of certain lands for the public purpose and no objections were filed. In the meanwhile, by proceedings dated December 26, 1990, the same came to be deleted by publication of the notification on June 28, 1993 and Final Plan was published on September 30, 1993. On a representation made by the Corporation, the Government had issued a corrigendum on August 19, 1994 restoring the status quo ante with a slight modification. The High Court in the impugned order, while upholding the validity of the notification under section 4(1) and declaration under Section 6 of the Land Acquisition Act, held that the award was not valid in law

since there was a corrigendum issued by the Government. Consequently, the procedure provided under the Act was to be followed by operation of Section 37 of the Act. Thus these appeals by special leave.

Mr. U.R. Lalit, learned senior counsel appearing for the respondents, contends that once the reservation has been deleted, status quo ante stands restored. As a consequence, the entire process required under Section 28 and Section 31 read with Section 37 requires to be followed. In this case, that was not done. The High Court was right in quashing the award. We find no force in the contention.

It is true that if any scheme is modified and the Plan has become final, the procedure contemplated under Sections 28 and 31 read with Section 37 of the Act is required to be adopted. But in this case, it is seen that as per the corrigendum what has been modified is that the entire site is now reserved for 'informal housing' and stable. Originally, the entire area was reserved for stables and 100 wide road. The reservation was deleted earlier, as stated above, and western part was included in commercial zone and eastern part was included in the residential zone on the plan. In view of the fact that of the final plan was restored, though a part of it is now said to be used for residential purpose, the question is whether the entire process of the issuance of the notice under Section 28 involving consideration of the objections and passing of the final plan after consideration is required to be gone through? It is seen that by operation of Section 127 of the Act where any land is included in any of scheme as being reserved, allotted or designated for any purpose specified therein or for the purpose of Planning Authority or Development Authority or Appropriate Authority and the State Government is satisfied that the same land is needed for a public purpose different from any such public purpose or purpose of the Planning Authority, Development Authority Appropriate Authority, the State Government may notwithstanding anything contained in this Act, acquire such land under the provisions of the Land Acquisition Act, l894. Sub-section (3) envisages that on the land vesting in the State Government under Section 16 or 17 of the Land Acquisition Act, 1894, as the case may be, the relevant plan or scheme shall be deemed to be suitably varied by reason of acquisition of the said land. Thus it could be seen that once a notification under section 4(1) was published and declaration under Section 6 of the Land Acquisition Act came to published, the public purpose becomes conclusive and for any variation without substantial formalities, it is not necessary that the entire process of re-publication of the notification under Section 28, finding having been recorded under both the Section 31 read with Section 37, requires to be followed. The view of the High Court, therefore, was not correct.

It is then contended by Mr. U.R. Lalit, that the respondents had not been given the information of the notification under Section 9 of the Land Acquisition Act. Therefore, the award is bad in law. We find no force in the contention. In the absence of notice or failure to serve notice, the award does not become invalid. Due to the fact that immediately after the award and before the publication of the award, the writ petition came to be filed on September 25, 1980, we direct the appellants to make an application within six weeks under Section 18(1) of the Land Acquisition Act seeking reference. The land Acquisition Officer is directed to refer the matter to the competent civil Court for disposal within two months according to law.

The appeals are accordingly allowed but without costs.