Supreme Court of India
Maharashtra Housing & Area ... vs Gangaram on 11 January, 1994
Equivalent citations: 1994 SCC (2) 489, 1994 SCALE (1)691
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
MAHARASHTRA HOUSING & AREA DEVELOPMENT AUTHORITY

Vs.

RESPONDENT:
GANGARAM

DATE OF JUDGMENT11/01/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1994 SCC (2) 489 1994 SCALE (1)691

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.The short question that arises in this batch of appeals is whether there should be an approved area development scheme before initiating the acquisition proceedings under Section 41 of the Maharashtra Housing and Area Development Act, 1976 (for short the 'MHADA Act'). The High Court following the ratio in State of TN. v. A. Mohammed Yousef held that as there is no approved area development scheme envisaged under Section 28 of the Act, the landholders cannot effectively exercise their right of objection under proviso to sub-section (1) of Section 41 of the MHADA Act. Accordingly quashed the notification published under Section 41 of the Act.

2.Shri Bhatt, learned Senior Counsel for the appellants contended that Section 41 postulates of only proposal and it is not necessary that there should be a pre-existing scheme under Section 28. Under Section 41 when once the Government is satisfied that there is a proposal to carry out any of the plans, projects or proposals, then proceeding under Section 41 could legally be initiated by

publication in the State Gazette to acquire the land. He contends that the State Government in this behalf have stated in the impugned notification that the Government was satisfied that there is a proposal and on that basis objections had been invited, there is no illegality in initiating action under Section

41. He further contended that the High Court was not right in its conclusion that there should be pre-existing area development scheme approved by the State Government. The ratio in Mohd. Yousef case is not applicable for the reason that under Tamil Nadu State Housing Board Act, 1961 different schemes have been contemplated and in the light of those schemes some of which required the need for acquisition of land, this Court observed in Mohd. Yousef case that there should be a preexisting scheme before initiating the proceedings for acquisition under Section 70 of the T.N. Act. In the light of the provision in MHADA Act, the ratio was wrongly applied by the Division Bench of the Bombay High Court. We find no force in the contentions.

3.Section 28 of the MHADA Act postulates that subject to the provisions of the Town Planning Act and sub-sections (b) and

(h) of Section 12(1) and Section 13 of the Metropolitan Act, the Authority has a duty to prepare or direct the Board to prepare and execute the proposals, plans or projects for providing housing accommodation in the State or any part thereof. Under clause (c) of Section 28(1) the proposals, plans or projects shall be prepared by the Board and are required to be approved under Section 28(1)(b) itself. Therefore, for any proposal for development of a housing accommodation scheme in the State or any part thereof the Authority or the Board is required to make a scheme and the scheme is to be approved by the Board. On approval thereof, it requires to be sent to the State Government. On the State Government agreeing with the proposal, then proceedings under Section 41 of the MHADA Act would be initiated to acquire the land for implementation of the approved scheme. In pari materia the T.N. Act, though envisages different schemes, the procedure to be followed is not different. In that Act also before initiating the proceedings under the Land Acquisition Act, 1894 as contemplated under Section 70 thereof approval of 1 (1 991) 4 SCC 224: JT (1 991) 3 SC 347 the Government for the proposed scheme is necessary. This Court interpreted similar language and held that the scheme was required to be approved by the State Government. It is, therefore, incumbent that before initiating the proceedings for acquisition under Section 41 of MHADA Act, there should be a scheme or a plan prepared and approved by the Board and accepted by the State Government. On its acceptance, action could be taken by the Government under Section 41 to acquire the land for the proposed scheme. It could be seen that the right to object for the proposed acquisition is not an empty formality. It is a valuable right given to the landowners. Once the scheme is formulated and proposal has been initiated for acquiring the land, it may be open to the landowners to point out by making relevant objections regarding the need of the land for the proposed acquisition. This Court had held in Mohd. Yousef case that in the absence of such an approved scheme, the proposal for acquisition is invalid and the objections were rightly held valid. The High Court has found in the judgment that "there is no proposal for area development scheme even in the documents so made available at the last moment purporting to be the proposal of the respondent-Authority. In this background it is difficult to uphold the validity of the preliminary notice dated April 17, 1984". In the light of this finding and in the light of the above view, the

decision of the Bombay High Court in the impugned judgments cannot be said to be vitiated by any error of law warranting interference. It is made clear that this decision would apply to the notifications issued under Section 41 and published on and from January 12, 1994 and all notifications issued earlier would not become invalid or illegal. Equally all acquisitions relating to the proposals which became final, are not liable to be reopened, even though no approved scheme by the Board and accepted by the Government was in existence before publishing notification under Section 41. The appeals are accordingly dismissed but in the circumstances without costs.