Supreme Court of India
Allahabad Development Authority vs Nasiruzzaman & Ors on 2 September, 1996
Bench: K. Ramaswamy, G.B. Pattanaik

PETITIONER:
ALLAHABAD DEVELOPMENT AUTHORITY

Vs.

RESPONDENT:
NASIRUZZAMAN & ORS,

DATE OF JUDGMENT: 02/09/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

THE 2ND DAY OF SEPTEMBER Present:

Hon'ble Mr.Justice K.Ramaswamy Hon'ble Mr Justice G.B.Pattanaik Milan Banerjee, Sr.Adv. and R.B.Mishra, Adv. With him for the appellant In-person for the Respondents O R D E R The following Order of the Court was delivered: Leave granted.

We have heard learned counsel for the appellant as well as respondent-in-person who is also a practising advocate.

Notification under Section 4 (1) of the Land Acquisition Act, 1894 (1 of 1894) (for short, the Act') was published on June 18, 1977 acquiring the large extent of land admeasuring 23 bighas and 19 biswas for Transport Nagar Scheme. Enquiry under Section 521) of the Act was dispensed with in exercise of the power under Section 17(1-A), as emended by the Legislature of the U.P, substituting the Act. Possession thereof was taken on November 2, 1977 and transferred to the Transport Nagar Scheme. Those lands stood vested in the State under Section 16 of the Act free from all encumbrances and stood transferred to the beneficiary.

The question that arises for consideration is: whether the High Court was right in passing the order

dated December 15, 1993 and the order dated January 29,1990 declaring that the acquisition proceedings by operation of Section 11-A, as amended by Act 68 of 1984, stood lapsed and direction given for delivery of possession to the respondents would be in accordance with law? The controversy is no longer res integra. In Lt. Governor of H.P vs. Avinash Sharma [(1971) 1 SCR 413 this Court had laid down that once the lands stood in the State free from all encumbrances there is no question of divesting the land and re-vesting the land in the erstwhile owners. The only right the erstwhile owner has is as to the determination in accordance with the provision of the Act. In view of the fact that there was inordinate delay in passing the award after the declaration under Section 6(1) was published, the Parliament in the Amendment Act introduced Section 11-A and directed that the Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration. If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. Under the proviso, it was said that where the declaration has been published before the commencement of the Amendment Acts the award shall be made within a period of two years from the commencement of the Amendment Act. In the impugned judgment, it would appear that the learned Judges asked the counsel to verify together the award came to be made within two year as indicated. The counsel on verification had stated that the award was not trade within two years from the commencement of the Amendment Act, namely, September 24, 1984. Consequently the declaration was given that the notification under Section 6 stood lapsed. This question was examined by this Court in Satendra Prasad Jain & Ors.[(1993) 4 SCC 369] and Awadh Bihari Yadav & Ors etc. v. State of Bihar & Ors [(1995) 6 SCC 31 at 38] and held that Section 11-A does not apply to cases of acquisition under Section 17 where Possession was already taken and the land stood vested in the State. The notification under Section 6 do not lapse due to failure to make award within two years from the date of declaration. The view of the High Court is erroneous in law .

It is no doubt true that there was no appeal filed against the said order except the one now filed with application for condonation of the delay. The question therefore, is: whether the view taken by the High Court is correct in law? As early as in 1971, this Court had held that once the lands stood vested in the State, the question of divesting and revesting the acquired land in the erstwhile owner did not arise. The Amendment Act has to be relied upon only in the pending proceedings. But once the possession was taken pursuant to the exercise of the power under Section 17(4) of the Act, the lands stood vested in the State under Section 16 free from all encumbrances. Thereby, the question of lapse of the proceeding of notification under Section 4(1) and declaration under Section 6 does not arise. Therefore, the view of the Division Bench was clearly erroneous. In that perspective, this court has considered in Municipal Committee, Amritsar & Anr. vs. State of Punjab & Ors.[(1969) 3 SCR 447 at 454], and held thus:

> "The Order made by the High Court in Mohinder Singh Sawhney's case striking down the Act was passed on the assumption that the validity of the Act was liable to be adjudged by the test of "due process of law". The Court was plainly in error in so assuming. We are also unable to hold that the previous decision operates as res judicata even in favour of the petitioner in whose petitions an order was made by the High Court in the first group of petitions. The effect of that decision was only that the Act was in law, non existent, so long as there was no definition of the expression

> "cattle fair " in the Act. That defect has been remedied by the Punjab Act 18 of 1968. We may hasten to observe, that the Act as originally enacted was unenforceable even on the ground of vagueness."

In view of the above ratio, it is seen that when the Legislature has directed to act in a particular manner and the failure to ac results in a consequence, the question is whether the previous order operates as res judicata or estoppel as against the persons in dispute. When the previous decision was found to be erroneous on its face, this court held in the above judgment that it does not operate as res Judgment We respectfully follow the ratio therein. The principle of estoppel or res Judgment does not apply where to give effect to them would be to counter some statutory direction or prohibition. A statutory direction or prohibition cannot be over-ridden or defeated by a previous judgment between the parties. In view of the fact that land had already stood vested in the State free from all encumbrances, the question of divesting does not arise. After the vesting has taken place, the question of lapse of notification under Section 4(1) and the declaration under Section 6 would not arise. Consideration from this perspective, original direction itself was delivery of possession of the land, in consequence, was not valid in law. Further it is made clear that the respondent are entitled to interest at 9% for one year from the date of taking possession and thereafter at 15% per annum till the date of deposit into court. The respondents are not entitled to market value as on the date of award.

With these modifications, the appeal is allowed but, in the circumstance, without costs.