Supreme Court of India
Sam Hiring Co vs A.R. Bhujbal & Ors on 12 January, 1996
Equivalent citations: JT 1996 (2), 406 1996 SCALE (1)658
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
SAM HIRING CO.

Vs.

RESPONDENT:
A.R. BHUJBAL & ORS.

DATE OF JUDGMENT: 12/01/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (2) 406 1996 SCALE (1)658

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

We have heard the learned counsel on both sides. This appeal arises from the order of the Division Bench of the Bombay High Court made in Appeal No.893/92. The facts lying in short compass are stated as under:

The appellant is the tenant of the land which is a part of City Survey Ne.56, which was sought to be acquired under the Maharashtra Housing & Area Development Act, 1976, (for short, 'Act'). The superstructure in City Survey No.56 was in a dilapidated condition. Therefore, the Bombay Housing and Area Development Board had examined the position and decided that a scheme was required to be framed under the Act for reconstruction and thereafter for allotment to the persons in occupation. When the acquisition proceedings were initiated after finalisation of the scheme, notices were given under Section 5-A to the interested persons including the appellant the appellant had raised the contention that the tenement in which it was carrying on the business was not part of the

City Survey No.56. It is an independent building and, therefore, it is not liable to be demolished for acquisition. Based upon that objection, a report was called for from the Executive Engineer who submitted the report thereon to the Land Acquisition Officer. After considering the report, he submitted a proposal for proceeding with the acquisition. It is not in dispute that except this structure, all other structures have been demolished in 1981 and the construction is yet to start. Ever since all others are, unfortunately, in transit camp.

Shri S.K. Dholakia, the learned senior counsel for the appellant, has contended that by operation of the provisions of Section 2(7) read with Section 2(9), the building in occupation of the appellant it non-cess payable building. Consequently, the building which is in exclusive possession in Chapter VIII, is not liable to be proceeded with, if the value of the reconstruction is Rs.500/- per sq.mt. or below. Since a certificate in that behalf has already- been issued in support thereof, the action taken for demolition and acquisition is not according to law. After the report submitted by the Executive Engineer, the Land Acquisition Officer had not given any independent hearing nor called the Executive Engineer for cross-examination. Therefore it is violative of the principles of natural justice. The third contention raised is that the Land Acquisition Officer should have considered all the objections and given finding on each of the objections before submitting his proposal for further action. Shri M.L. Verma, the learned senior counsel resisted all these contentions.

Having given consideration to the respective contentions, the question arises whether the structure on which the appellant is tenant is an independent building in City Survey No.56? Before the Division Bench of the High Court, the counter-part of Shri S.K. Dholakia, had conceded that the principle contention raised was that the shed only "is not liable to be acquired even though the shed is a part of the plot, City Survey No.56." The gravamen of the complaint is that the Board can move the Government only to acquire the building for the purpose of reconstruction exercising power under Section 76(d) of the Act. The Division Bench has held that p1ain reading of Section 2(7) of the definition of 'building' makes it clear that it includes a tenement let or intended to be let or occupied separately and a house, out-house, stable, shed, hut and every other such structure. On account of that finding, it was held that the structure in which the appellant has been carrying on the business is part of City Survey No.56 as has been conceded by the learned counsel who appeared for the appellant in the High Court and as such is liable to be acquired. Once it is concluded that he is a tenant or that his shed is part of the building, the question whether the tenant is independently paying cess under the Act as defined under Section 2(9) is not of much relevance. It must therefore, be concluded that the structure in which the appellant is carrying his business is part of the City Survey No.56. The finding of the authorities cannot be disputed that the structures are in dilapidated condition and requirhe demolition for reconstruction. It being a finding of fact, the necessary conclusion is that restructure requires to be done in accordance with law.

The question then is: whether the appellant is entitled to the further hearing? After the report was submitted by the Executive Engineer with regard to the objections raised by the appellant, the Division Bench of the High Court has pointed out that the Land Acquisition Officer had considered the objections after hearing him and with a view to satisfy himself whether the objections raised by the appellant were tenable, he required factual material and so he called for the report from the Executive Engineer. The Executive Engineer's report was submitted clearing the position and the

finding is not adverse to the appellant but beneficial to him. Therefore, the need to give further opportunity does not arise nor is there any need to call the Executive Engineer for cross-examination. Accordingly, the principle of natural justice has not been violated.

The Land Acquisition Officer is not a judicial authority or a quasi-judicial authority. He exercised the power under Section 5-A as an administrative authority. But the Act requires that he should consider the objections and, if asked, to give an opportunity of hearing. In this case, opportunity of hearing was given and the objections raised were considered. The principle of natural justice has been complied with. He was not required to elaborately deal with each of the objections and submit the report. Considered from this perspective, we do not think that there is any error of law warranting interference.

The appeal is accordingly dismissed. No costs.