
(1987) 02 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 738 of 1985

Green Park Co-operative Housing Society Ltd., Indore

APPELLANT

Vs

Indore Development Authority, Indore and Others

RESPONDENT

Date of Decision : 07-02-1987

Acts Referred:

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 50, 87

Citation : AIR 1988 MP 27

Hon'ble Judges : R.K. Verma, J;G.G.Sohani, J

Bench : Division Bench

Advocate : G.M. Chaphekar, V.S. Kokje and Bhagwat Harbansingh, for the Appellant; S.C. Bagdia and Kulshreshtha, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sohani, J.—This is a petition under Articles 226/227 of the Constitution of India.

2. The material facts giving rise to this petition, briefly, are as follows :

(i) The petitioner is a Co-operative Society registered under the M.P. Co-operative Societies Act, 1960. Respondent 1 is a Town and Country Development Authority (hereinafter referred to as "the Authority"), duly constituted under the provisions of Section 38 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as "the Act"). The Act came into force on 16-3-1973. The Authority was constituted on 13-5-1977. Prior to that date, the Indore Improvement Trust (hereinafter referred to as "the Improvement Trust") was in existence and was constituted under the provisions of the M.P. Town Improvement Trust Act, 1961 (hereinafter referred to as "the Improvement Trust Act").

(ii) The petitioner is the owner and Bhumiswami of certain parcels of land situated in village Tejpur Garbari and Pipliaroa in Tehsil Indore. This land was included in a housing accommodation scheme known as Scheme No. 59, framed

by the Improvement Trust by its resolution dt. 25-11-1964. Before the scheme was sent to the State Government for sanction, as required by Section 50 of the Improvement Trust Act, a development plan, known as "the Master Plan" for the city of Indore, was framed by the Director, Town and Country Planning, under the provisions of the Act. Under that plan, the area comprised in the aforesaid Scheme No. 59, was shown as an area reserved for a purpose different from that for which Scheme No. 59 had been prepared. The Improvement Trust was, however, of the view that the Change in the purpose of the scheme did not affect the validity of Scheme No. 59 framed by the Trust and the said scheme was, therefore, sent to the State Government for according its sanction u/s 51 of the Improvement Trust Act. By the notification published in the Government Gazette dt. 8th April 1977, the State Government accorded its sanction to Scheme No. 59. Thereafter, the Authority was constituted under the Act on 13-5-1977. After the establishment of the Authority, the Indore Improvement Trust stood dissolved and an improvement scheme prepared under the Improvement Trust Act, in so far as it was not inconsistent with the provisions of the Act, was to be deemed to be a scheme prepared under the Act, by virtue of Section 87(c)(ii) of the Act. Accordingly a notice u/s 50(7) of the Act was published on 11-11-1977 specifying that the Scheme No. 59 would come into operation from the date of its publication. Aggrieved by that scheme, the petitioner preferred a revision petition u/s 51 of the Act before the Director, Town and Country Planning. By his order dt. 13th July 1983, the Director allowed the revision petition and set aside Scheme No. 59 in so far as it related to the land of the petitioner.

(iii) Aggrieved by the order passed by the Director, the Authority preferred a petition under Articles 226 and 227 of the Constitution before this Court. A Division Bench of this Court, by order dt. 7-4-1984, held that no case was made out for interference with the order passed by the Director. The Division Bench, therefore, dismissed the petition filed by the Authority.

(iv) In the meantime, the State Government had proceeded to acquire land comprised in Scheme No. 59 including the land of the petitioner, under the provisions of the Land Acquisition Act, 1894, and issued a notification published in the Government Gazette dt. 30th Dec. 1983. The petitioner, through its counsel, brought it to the notice of the Land Acquisition Officer by the letter dt. 9-8-1984 that the land of the petitioner was released by the Director from the purview of Scheme No. 59 and that the decision of the Director was not set aside by the High Court in the petition preferred by the Authority. As the Land Acquisition Officer did not consider the objections preferred by the petitioner, the petitioner made a representation to the Authority that in the circumstances of the case, the land of the petitioner be excluded from acquisition proceedings. The petitioner was informed by the Authority by letter dt. 20-2-1985 that the representation of the petitioner was rejected. Hence, the petitioner has filed this petition.

3. Shri Chaphekar, the learned counsel for the petitioner, contended that Scheme

No. 59 was not a validly framed scheme under the Act; that proceedings under the Land Acquisition Act for acquisition of the land comprised in the Scheme could not be commenced according to law and that in any event, so far as the land of the petitioner was concerned, the said land having been released from the purview of Scheme No. 59 by the Director, Town and Country Planning, whose order was upheld by this Court in Miscellaneous Petition No. 57 of 1984, the notification u/s 4 of the Land Acquisition Act, in so far as it related to the acquisition of the land of the petitioner, deserved to be quashed.

4. In reply, Shri Bagadia, the learned counsel for the Authority, contended that the notification issued u/s 50(7) of the Act was redundant and hence, the order of the Director releasing the land of the petitioner was non est; that the notification announcing sanction of the State Government to Scheme No. 59 having been published, as required by Section 52(1) of the Improvement Trust Act, the validity of the scheme could not be assailed and proceedings for acquisition of the land including the land of the petitioner, which was comprised in Scheme No. 59, were valid and according to law.

5. Having heard learned counsel for the parties, we have come to the conclusion that this petition deserves to be allowed on the short ground that the land of the petitioner having been released from the purview of Scheme No. 59 by the Director, Town and Country Planning, it could not be acquired for implementation of Scheme No. 59. The Authority, however, is justifying the action to acquire the land of the petitioner in pursuance of Scheme No. 59 on the ground that the order of the Director releasing the land of the petitioner from the purview of Scheme No. 59 is non est. The short question for consideration, therefore, is whether the order passed by the Director releasing the land of the petitioner from Scheme No. 59 can be held to be null and void.

6. Now the respondent Authority was established on 13-5-1977. Section 87(c) of the Act provides that as from the date of the establishment of the Town and Country Development Authority for any area, the Improvement Trust Act shall stand repealed in its application to the said area and any town improvement scheme prepared under the Improvement Trust Act shall, in so far as it is not inconsistent with the provisions of the Act, be deemed to have been prepared under the Act. Therefore, after the establishment of the Authority on 13-5-1977, any town improvement scheme prepared by the Improvement Trust under the Improvement Trust Act cannot be implemented under the provisions of the Improvement Trust Act. Such a scheme can only be implemented under the Act as a scheme deemed to have been prepared under the Act, provided the said scheme is not inconsistent with the provisions of the Act. In this connection it is useful to remember that the provisions for implementation of a scheme, under the Act and the Improvement Trust Act differ in material particulars. Under the Improvement Trust Act, the notice of acquisition of land is to be given by the Improvement Trust. The Improvement Trust has to take steps for acquisition after obtaining sanction of the State Government for acquisition and that in case

of dispute, compensation is to be determined by a Tribunal constituted under the Improvement Trust Act. Under that Act, there is no presumption that land needed for the purpose of a town improvement scheme shall be deemed to be a land needed for public purpose. Such a presumption, however, arises under the provisions of Section 55 of the Act. Section 56 of the Act provides for acquisition of land by the State Government at the request of the Authority for implementation of a scheme. After the constitution of the Authority, a scheme prepared under the Improvement Trust Act can be implemented under the Act only if it can be deemed to be a scheme prepared under the Act by virtue of the fiction introduced by Section 87(c) of the Act. The provision for preparation of a town development scheme is contained in Section 50 of the Act. After a final town development scheme is prepared, as provided by Section 50 of the Act, Sub-section (7) of Section 50 of the Act provides for its publication. That provision is as follows:

"(7) Immediately after the town development scheme is approved under Sub-section (4) with or without modifications, the Town and Country Development Authority shall publish in the Gazette and in such other manner as may be prescribed a final town development scheme and specify the date, on which it shall come into operation."

In pursuance of the aforesaid provisions of Section 50(7) of the Act, the Authority published Scheme No. 59 in the Government Gazette dt. 11-11-1977. Section 51 of the Act empowers the Director to exercise revisional powers in connection with the final town development scheme notified u/s 50(7) of the Act. Section 51 further provides that the order passed by the Director shall be final. In the instant case, the petitioner aggrieved by the final development Scheme No. 59 published in the Gazette as aforesaid, preferred a revision petition before the Director and the Director released the land of the petitioner from the purview of Scheme No. 59. The order of the Director was assailed by the Authority in a petition under Articles 226/227 of the Constitution but that petition was dismissed by this Court on merits, by order dt. 27-4-1984 in *Indore Development Authority v. Green Park Co operative Housing Society*, Misc. Petn. No. 57 of 1984. The relevant observations of this Court in that order are as follows :

"The respondent 3, who had jurisdiction to decide the questions raised before him, passed an order upholding the objections of the respondent 1 against the scheme published by the petitioner u/s 50(7) of the Adhinyam. The respondent 3 is not shown to have acted in excess of jurisdiction vested in it by law and the order is also not shown to have been vitiated by an error of law apparent on the face of record."

In face of the aforesaid observations, the contention that the Director had no jurisdiction to decide the revision petition as the revision petition was not competent, cannot be allowed to be urged again in this petition. The question of jurisdiction of the Director to release the land of the petitioner from the purview of Scheme No. 59 by passing an order in that behalf in the revision petition

preferred by the petitioner, was finally decided by this Court in Misc. Petn. No. 57 of 1984 (supra). It is no longer open to the Authority to contend that the revision petition itself being untenable as it was directed against a redundant notification issued by the Authority, the decision of the Director in the revision petition must be held to be null and void.

7. The learned counsel for the Authority, however, strenuously contended that in its judgment in Misc. Petn. No. 57 of 1984 (supra), the High Court had observed that if the Authority was of the view that Scheme No. 59 was in force, it might proceed to implement the said scheme. But this observation cannot be construed to mean that the High Court in that judgment had left the question open as to whether, while implementing Scheme No. 59, as published u/s 50(7) of the Act, the Authority was at liberty to ignore the order passed by the Director releasing the land of the petitioner from the purview of Scheme No. 59. The effect of the decision of the High Court in M.P. No. 57 of 1984 (supra) is that Scheme No. 59 published u/s 50(7) of the Act, as modified by the Director u/s 51 of the Act, can be implemented if the Scheme is in force according to law. The impugned notifications under the Land Acquisition Act have been issued by the State Government under the Act for implementation of Scheme No. 59. In view of the order of the Director, which has become final, the land of the petitioner cannot be acquired under the Act for implementation of Scheme No. 59 as the Director had released that land from the purview of Scheme No. 59.

8. Moreover, the contention advanced on behalf of the Authority that the notification issued u/s 50(7) of the Act was redundant, is devoid of any merit. After the establishment of the Authority, a town improvement scheme prepared by the Improvement Trust under the Improvement Trust Act could not be implemented under the provisions of the Improvement Trust Act as that Act stood repealed. Such a scheme could only be implemented by resorting to the provisions of the Act by virtue of the deeming provisions in Section 87(c) of the Act. As Scheme No. 59 framed by the Improvement Trust was to be deemed to be a scheme prepared under the Act, the publication u/s 50(7) of the Act, of the final town development Scheme No. 59, deemed to have been prepared under the Act, was imperative because without such publication, the provisions of the Act relating to implementation of the scheme would not be attracted, as would be clear from Section 56 of the Act, which reads as under :

"56. Acquisition of land for Town and Country Development Authority -- The Town and Country Development Authority may, at any time after the date of publication of the final town development scheme u/s 50 but not later than three years therefrom, proceed to acquire by agreement the land required for the implementation of the scheme and, on its failure so to acquire, the State Government may, at the request of the Town and Country Development Authority, proceed to acquire such land under the provisions of the Land Acquisition Act, 1894 (No. 1 of 1894), and on the payment of compensation awarded under that Act and any other charges incurred by the State Government

in connection with the acquisition, the land shall vest in the Town and Country Development Authority subject to such terms and conditions as may be prescribed."

To attract the aforesaid provisions of the Section 56 of the Act, the Authority issued the notification u/s 50(7) of the Act. The said notification cannot be held to be redundant. The revision petition preferred by the petitioner u/s 51 of the Act, directed against the notification, was validly entertained by the Director and his order releasing the land of the petitioner has become final. It, therefore, follows that the respondents cannot proceed to acquire the land of the petitioner under the Land Acquisition Act for the purpose of implementation of Scheme No. 59. In this view of the matter, it is not necessary to consider the larger question relating to the validity of Scheme No. 59, which is sought to be implemented under the Act. We also refrain from expressing any opinion on the question as to whether Scheme No. 59 as framed by the Improvement Trust, could be implemented by the Authority even after alteration of the purpose for which Scheme No. 59 was prepared by the Improvement Trust.

9. For all these reasons, this petition is allowed. The notifications u/s 4 of the Land Acquisition Act issued by respondent 3, Annexures R and R-1 in so far as they relate to the land of the petitioner, are quashed and the respondents are restrained from proceeding to acquire the land of the petitioner in implementation of Scheme No. 59. In the circumstances of the case, parties shall bear their own costs of this petition. Security amount, if any, is refunded to the petitioner.