
(1993) 11 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3666 of 1989

Himmat Jain

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-11-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6
Rajasthan Land Revenue (Allotment, Conversion and Regularisation of Agriculture Land for Residential and Commercial Purposes in Urban Areas) Rules, 1981 — Rule 3
Rajasthan Urban Improvement Trust Act, 1959 — Section 32, 32(2A), 52(1)

Citation : AIR 1994 Raj 53 : (1994) 3 WLC 360

Hon'ble Judges : K.C. Agrawal, C.J.; A.K. Mathur, J

Bench : Division Bench

Advocate : Dinesh Maheshwari, for the Appellant; L.S. Udawat, A.A.G. and Lalit Kawadia, for U.I.T., for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This is a petition" filed under Article 226 of the Constitution of India by Himmat Jain for the following main reliefs : --

"(1) that the orders of the Board of Revenue dated 13-9-1988 (Annex. 5), the Revenue Appellate Authority, Udaipur dated 31-1-1986 (Annex. 3) and that of the Sub-Divisional Officer (Land Conversion-II), Udaipur dated 3-1-1985 (Annex. 2) be quashed; and necessary permission be given to the petitioner for conversion of the land; and

(2) that the acquisition proceedings and the notifications issued under Sections 4 and 6 of the Land Acquisition Act be quashed."

2. The petitioner filed an application under Rule 6 of the Rajasthan Land Revenue (Allotment, Conversion and Regularisation of Agricultural Land for Residential and Commercial Purposes in Urban Areas) Rules, 1981 (hereinafter to be referred as "the Land Conversion Rules of 1981") for conversion of his land

situated in old Araj No. 200/1, 200/ 2 and 203 (New Araj No. 34) at village Sawinakhera Tehsil Girwa District Udaipur in form No. A as prescribed under the Land Conversion Rules of 1981 before the Sub-Divisional Officer (Land Conversion-II), Udaipur. The petitioner also submitted the fee required for obtaining conversion.

3. The application was rejected by the Sub-Divisional Officer (Land Conversion-II), Udaipur by the order dated 3-1-1985. Against the said order, the petitioner preferred an appeal before the Revenue Appellate Authority, Udaipur submitting that the rejection of the application made by him for conversion was illegal. The Revenue Appellate Authority observed that since the petitioner had not submitted any objection, the land cannot be allowed to be converted. The appeal was dismissed by the Revenue Appellate Authority on 31-1-1986.

4. Against the order of the Revenue Appellate Authority dated 31-1-1986, the petitioner preferred second appeal before the Board of Revenue. In the second appeal, the petitioner contended that the Revenue Appellate Authority had, on extraneous and wrong reasons, rejected the application for conversion. He contended that the Rule 8 of the Land Conversion Rules of 1981 required the application to be forwarded to the Local Body. The Appellate Authority had not done so and, as such, it failed, to perform the duty assigned to it under the Land Conversion Rules of 1981.

5. The Board of Revenue agreed with the authorities below it and dismissed the second appeal by the judgment dated 13-9-1988.

6. We have heard learned counsel for the parties.

7. The learned counsel for the petitioner urged that the rejection of the application made by the petitioner for conversion of land was illegal and against the provisions of the Rajasthan Urban Improvement Act, 1959 (hereinafter to be referred to as "the Improvement Act") and the Land Conversion Rules of 1981. Therefore, the orders of all the three authorities i.e. the Sub-Divisional Officer (Land Conversion-II), Revenue Appellate Authority and the Board of Revenue were illegal and liable to be quashed.

8. We are unable to find any merit in the submission made by the petitioner's counsel. The Board of Revenue dismissed the second appeal after examining the orders of the authorities below it and finding that the land had since been proposed by the State Government for acquisition, the relief with regard to conversion could not be granted to the petitioner. There was no point in granting the prayer for conversion when the land was likely to be acquired for public purpose. Permitting the petitioner to convert the use of land was not likely to serve any purpose. Consequently, as there was no material before the authorities of the Revenue Department that the use of the land was likely to be changed, the prayer made in the application for conversion was correctly rejected.

9. It is settled that the mandamus would not go when it appears that it would be

futile in its results. It is also settled that the mandamus would not issue to perpetuate an illegality, or to revive another if legal order. See A.M. Mani v. Kerala State Electricity Board AIR 1968 Ker 76 (FB) and Devendra Prasad and Others Vs. State of Bihar and Another,

10. We, therefore, find no merit in issuing a writ in the nature of certiorari and mandamus with a direction to the Board of Revenue and other authorities to allow the application made by the petitioner for conversion.

11. The second prayer of the petitioner was about quashing of the acquisition proceedings and the notification issued u/s 4 and 6 of the Land Acquisition Act (hereinafter to be referred to as "the Act").

12. , The State Government published a notification u/s 4 of the Act proposing to acquire the land of the petitioner and several others for Sub-City Centre Scheme. The petitioner filed an objection u/s 5A of the Act asserting that the land which was intended to be acquired did not possess the qualities for the said purpose. This objection was rejected by the State Government. Thereafter, the State Government issued a notification u/s 6 of the Act.

13. The argument of the petitioner's counsel was that unless the scheme had been approved, the State Government had no power to acquire the land.

14. According to the learned counsel, while framing the scheme, various matters have to be taken into consideration as provided in Section 30 of the Improvement Act and regard shall be had to (a) the nature and the conditions of such area and of neighbouring area as a whole; (b) the several directions in which its expansion appears likely to take place; (c) the likelihood of schemes being framed for other parts of the area; and (d) such other matters as may be prescribed. The emphasize was that the scheme has to be in conformity with the Master Plan as required by Section 31 of the Improvement Act.

15. We have considered the arguments. In our opinion, since the scheme had been framed, the acquisition of land cannot be invalidated or held ineffective.

16. Section 32 of the Improvement Act deals with the previous notification of area for which scheme is framed. It reads as under: --

"Section 32 -- Previous notification of area for which scheme is framed --- duration and effectiveness of such notification --

(1) Whenever the Trust decides to frame a scheme for any urban area, the State Government may, at the request of the Trust, issue a notification specifying such area and declaring that the Trust has decided to frame a scheme for such area.

(2) A notification under Sub-Section (1) shall remain in force for six months from the publication thereof:

Provided that the State Government may, for sufficient reasons, extend the said period by a further period not exceeding six months.

(2-A) Where in the opinion of the State Government, it is necessary so to do in public interest, it may, by order published in the Official Gazette, extend the period of the notification issued under Sub-Section (1) for such further period as it thinks fit, notwithstanding that the period of the notification or the extended period thereof under the provisions of Sub-Section (2) has expired. An order under this section may be made so as to be retrospective with effect on and from a date next following the expiration of the period of the notification or the extended period thereof under Sub-Section (2).

(3) If the sanction of a scheme is notified in accordance with Section 38 in respect of such area before the expiry of the notification under this section such notification shall continue in force until the scheme is carried out.

(4) During the period that a notification under this section remains in force in respect of any urban area no building shall be erected, re-erected, altered or added within that area without the written sanction of the Trust."

17. Section 36 of the Improvement Act deals with the abandonment of scheme, whereas Section 37 of the Improvement Act confers power on the State Government to sanction, reject or return the scheme.

18. Section 38 of the Improvement Act reads as under: --

"Section 38. Notification of sanction of scheme -- (1) Whenever the State Government sanctions a scheme it shall announce the fact by notification, and the Trust shall forthwith proceed to execute the same.

(2) The publication of a notification under Sub-Section(I) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned."

19. Annexure 10 to the writ petition dated 25-8-1983 is the letter sent by the UIT, Udaipur to the State Government u/s 32(1) of the Improvement Act for publishing a notification. The State Government, thereafter, published a notification u/s 32(I) of the Improvement Act on 20-2-1984. Thereafter, the notification u/s 33 of the Improvement Act was issued on 8-3-1984.

20. Section 33 of the Improvement Act deals with the preparation, publication and transmission of notice as to schemes and supply of documents to applicants. Section 33(1) of the Improvement Act reads as under: --

"Section 33. Preparation, publication and transmission of notice as to schemes and supply of documents to applicants -- (1) When any scheme has been framed, the Trust shall prepare a notice stating -

(a) the fact that the scheme has been framed;

(b) the boundaries of the area comprised in the scheme; and

(c) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire may be

seen at reasonable hours."

21. The period of six months allowed by the notification dated 20-2-1984 had been extended from time to time. Sub-Section (2A) of Section 32 of the Improvement Act was inserted in 1976. Sub-Section (2-A) of Section 32 of the Improvement Act empowered the State Government to extend the period even in respect of those scheme which had been expired.

22. From the discussion made above, we find that the scheme had been finalised and the sanction to the same had been given by the State Government.

23. So far as master plan is concerned, to us it appears that there is no bar under the Land Acquisition Act for acquiring the land. The acquisition of land, under the Land Acquisition Act, has to be for public purpose. Even if the master plan had not been finalised, the State Government could, seeing the urgency of the matter and need of public, issue notification u/s 4 of the Act. It is nowhere provided that so long as the master plan had not been prepared, the land could not be acquired.

24. The purpose for which the acquisition of land was intended to be made or had been made was a public purpose. The public purpose is a purpose for the good of the public. That means that it is opposed to private purpose. It was held in *Tej Ram Jag Ram Vs. Union of India (UOI) and Others*, that it was hard to define as to what the public purpose is.

25. In the instant case, the purpose of acquisition was for establishment of Sub-City Centre. The purpose by itself indicates that it is a public purpose.

26. The publication of notification u/s 4 is compulsory in all cases of acquisition of land under the Act. The acquisition can be made by the State Government for public purpose. Whether there was a master plan or scheme under the Improvement Act that would not come as impediment for acquiring of land. The State Government has only to show that the purpose of acquisition was public purpose. The decisions noted below would indicate that there can be acquisition for a public purpose by the Government and it is not always necessary to mention that purpose in the notification u/s 4.

27. *Vivian Bose, J., in The State of Bombay Vs. Bhanji Munji and Another*, dealing with a case of requisition of property in para 11 at p. 45 of the reported judgment, observed : --

"In our opinion, it is not necessary to set out the purpose of the requisition in the order. The desirability of such a course is obvious because when it is not done proof of the purpose must be given in other ways and that exposes the authorities to the kind of charge we find here and to the danger that the courts will consider them well founded. But in itself an omission to set out the purpose in the order is not fatal so long as the facts are established to the satisfaction of the court in some other way."

28. The Supreme Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, held as under (at page 2080) : --

"According to the section, therefore, it is only necessary to state in the notification that the land is needed for a public purpose. The wording of Section 5 A would make it further clear that all that is necessary to be specified in a notification u/s 1 is that the land is needed for a public purpose. One reason for specification of the particular purpose in the notification is to enable the person whose land is sought to be acquired to file objections u/s 5A. Unless a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition u/s 5A. This Court has laid down in *Munshi Singh and Others Vs. Union of India (UOI)*, that it is necessary to specify the particular public purpose in the notification for which the land is needed or likely to be needed as, otherwise, the matters specified in Sub-Section (2) of Section 4 cannot be carried out.

We think that the question whether the purpose specified in a notification u/s 4 is sufficient to enable an objection to be filed u/s 5A would depend upon the facts and circumstances of each case

In the case of an acquisition of a large area of land comprising several plots belonging of different persons, the specification of the purpose can only be with reference to the acquisition of the whole area, unlike in the case of an acquisition of small area, it might be practically difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed.

Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration u/s 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices u/s 9 were issued to them We do not think that the appellants were vigilant.

That apart, the appellants did not contend before the High Court that as the particulars of the public purpose were not specified in the notification issued u/s 4, they were prejudiced in that they could not effectively exercise their right u/s 5A. As the plea was not raised by the appellants in the writ petitions filed before the High Court, we do not think that the appellants are entitled to have the plea considered in these appeals.... The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners."

29. For what we have said above, that leads us to the conclusion that the State Government irrespective of the Improvement Act could acquire the land for public purpose. For such acquisition, the procedure provided by the Improvement Act is not necessary.

30. The learned counsel for the petitioner challenged the validity of Sub-Section (2-A) of Section 32 of the Improvement Act.

31. The State Legislature conferred power on State to extend time for implementation of the scheme. We have seen above that the period for completion of the scheme was extended from time to time by the State Government. The extension of period requires the State Government to make an order from time to time. In this case as well, the extension was given three or four times, but the submission of the petitioner's counsel that such an extension would lead to arbitrariness on the part of the State Government is devoid of substance.

32. The Improvement Act was within the legislative competence of the State Legislature. In exercise of that power, Sub-Section (2A) was added. Reading the language employed in Sub-Section (2A) leads to the conclusion that the amendment was to operate retrospectively. As many schemes had lapsed and some of them were likely to lapse in future, the Legislature thought of making the provisions of Sub-Section (2-A). Moreover, the insertion of Sub-Section (2-A) has simplified the procedure. Neither the amendment takes away any fundamental right nor it is arbitrary. The amendment will apply equally to all cases wherever an occasion arises.

33. The learned counsel for the petitioner placed reliance on the decisions of the Supreme Court reported in *Gandhi Grah Nirman Sahkari Samiti Ltd. ect. etc. Vs. State of Rajasthan and others*, and in *State of Tamil Nadu and another Vs. A. Mohammed Yousef and others*,

34. In *Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan (supra)*, it has been said that the framing of the scheme was mandatory only when the work is undertaken by the Trust. The State Government, in any of its departments, may decide to develop the urban area under the Land Acquisition Act and in that case it would not be necessary for the Government to have a scheme framed under Chapter V of the Act. The Supreme Court in para 9 observed : --

"Mr. Shanti Bhushan, learned counsel appearing for the appellants, has contended that the framing of a scheme by the Trust under Chapter V of the Act is the sine qua non for invoking the provisions of Section 52 of the Act. According to him the State Government has no authority to acquire land u/s 52 of the Act unless the same is required for the execution of a scheme framed and sanctioned under Chapter V of the Act. The crux of the argument is that the improvement in the urban area can only be carried out by executing the schemes framed under the Act and in no other way. We do not agree with Mr. Shanti Bhushan. Under the scheme of the Act the improvement of the urban area can be undertaken by the Trust and also by any of the departments of the Government. The framing of the scheme becomes mandatory only when the work is undertaken by the Trust. The State Government, in any of its departments, may decide to develop the urban

area under the Act and in that case it would not be necessary for the Government to have a scheme framed under Chapter V of the Act. The power of the State Government to acquire land under the Act has been designed to meet the scheme of the Act. u/s 52 of the Act the land can be acquired by the State Government at the instance of the Trust, or a department of the Government or any prescribed authority. The plain language of Section 52 of the Act negates the contention raised by Mr. Shanti Bhushan. Where on a representation from the Trust or otherwise it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under the Act it can acquire such land by issuing a notification u/s 52 of the Act. It is, thus, clear that the State Government has the power to acquire land either for the execution of the schemes framed by the Trust under Chapter V of the Act or for any other public purpose under the Act. No fault can be found with the procedure followed by the State Government in this case. The notification issued by the State Government under Sub-Section (1) of Section 52 of the Act specifically states that the land was being acquired for the construction of residential, commercial and administrative buildings. The Government -- having taken a policy decision to acquire land for the public purpose -- was justified in issuing the notification u/s 52 of the Act in respect of the land in dispute. We, therefore, see no force in the contention of Mr. Shanti Bhushan and reject the same."

35. The aforesaid judgment supports the | contention of the respondents that the acquisition could be under the Land Acquisition Act or under the Improvement Act. The object of acquisition would have the same result whether it was under the Improvement Act or under the Land Acquisition Act. The opportunity of hearing have been provided under both the Acts to the persons whose land was sought to be acquired.

36. The case relied upon by the petitioner's counsel in *State of Tamil Nadu v. A. Mohd. Yousef* (supra) was also on different facts. This case does not help us in reaching to the conclusion which the petitioner's counsel wanted.

37. The learned counsel for the petitioner relied on the decision of this Court given in *Narain Vs. The State of Rajasthan and Others*, In that case, the Division Bench held that the framing of scheme was a condition precedent and further that the same had to be in accordance with the master plan. In that case, the acquisition was not justified on the basis of the power to the State Government to issue notifications under Sections 4 and 6 of the Act for public purpose.

38. The aforesaid decision of the Division Bench does not either help the petitioner or the respondents. The fundamental principle laid down by the Supreme Court in the case of *Gandhi Grah Nirman Sahkari Samiti Ltd.* (supra) was that the State Government could acquire the land by exercising its power under the Land Acquisition Act. For that purpose, neither any scheme under the Act was required nor the same has to be in conformity with the master plan.

39. It has been said by Cross and Harris in the book "Precedent in English Law":

"The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided, but it is not sufficient that the case should have been decided on a principle if that principle is not itself a right principle, or one not applicable to the case; and it is for a subsequent Judge to say whether or not it is a right principle, and if not, he may himself lay down the true principle. In that case the prior decision ceases to be a binding authority or guide for any subsequent Judge, for the second Judge who lays down the true principle in effect reverses the decision."

40. Dealing with the question as to which authority is binding, their Lordships said that the judgment must be read in the light of the facts of the case in which they are delivered. If we keep this interpretation in mind, we will find that the judgment of the Division Bench given in Narain's case (supra) is distinguishable and the law laid down by the Supreme Court in the case of Gandhi Grah Nirman Sahkari Samiti Ltd. (supra) is near to the facts of our case.

41. Lord Halsbury in *Quinn v. Leathern* (1901) AC 495, has laid down the law with regard to this controversy:

"Every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but govern and are qualified by the particular facts of the case in which such expressions are to be found."

42. The learned counsel for the petitioner contended that what was in Gandhi Grah Nirman Sahkari Samiti's case (supra) was only obiter dictum and obiter dictum could not guide the High Court in deciding the controversy raised before it. This controversy has been dealt with in the book "Precedent in English Law". When asked about the distinction between ratio decidendi and obiter dictum, Lord Asquith replied :

"The rule is quite simple, if you agree with the other bloke you say it is part of the ratio; if you don't you say it is obiter dictum, with the implication that he is a congenital idiot."

43. Sub-Section (1) of Section 52 of the Improvement Act provides that the State Government could acquire the land under and in accordance with the provisions of the Land Acquisition Act. Sub-Section (1) of Section 52 of the Improvement Act reads as under: --

"Section 52. Compulsory acquisition of land -- (1) Where on a representation from the Trust (or otherwise) it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under this Act, the State Government may acquire such land (under and in accordance with the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1984))."

44. This being the position in law, the acquisition made in the instant case could not be invalidated.

45. Strong reliance had been placed by the petitioner's counsel on the decision of this Court given in *Arjun Lal v. State of Rajasthan*, S.B. Civil Writ Petition No. 1468/ 1991 decided on May 11, 1992. In this case, it was held that since no scheme had been prepared, there could be no acquisition. This judgment was affirmed in appeal.

46. A decision is an authority for the point that it decides. All of those points which were before us in this writ petition were not considered in the aforesaid case as the same were not raised.

47. The last argument of the learned counsel for the petitioner was that the Improvement Act being specific will prevail over the Land Acquisition Act in matters of acquisition.

48. Under the Improvement Act, land can be acquired for improvement of the urban areas. For that purpose, a scheme has to be framed and, thereafter, submitted to the State Government for sanction. Under the Land Acquisition Act, land can be acquired by the State Government for public purpose. The public purpose is a wider term and has to be construed in the matter that carries out the purpose of acquisition.

49. In our opinion, there is no such competition in between the two Acts. Section 52(1) of the Improvement Act preserves the power of the State Government to acquire the land for improvement or for any other purpose. The Improvement Act would apply only to cases of improvement in accordance with the scheme, but where the State Government finds that the acquisition could be more effectively made by notifications under Sections 4 and 6 of the Land Acquisition Act, it will have a right to do so. In *State of Rajasthan Vs. Mukanchand and Others*, the principles for determination of validity of an Act have been laid down.

50. As to when the acquisition should be made under the Improvement Act is a matter of discretion of the State Government. That discretion is to be exercised by the State Government for relevant purposes. Moreover, Section 52(1) of the Improvement Act permits acquisition by the State Government for public purpose. Consequently, the field of operation of the Land Acquisition Act is wider. In some cases, it may over lap, but that will not result in invalidating the Act. The Improvement Act was passed by the State Legislature, whereas the Land Acquisition Act by the Parliament.

51. The Bill which provides the Statement of Objects and Reasons vide the Rajasthan Urban Improvement Bill 1957 (Bill No. 26 of 1957) published in The Rajasthan Gazette, Part IIIA dated 18-7-1957 runs as under: --

"Several urban areas in Rajasthan are in absolutely abandoned and improper conditions. This is due to lack, of funds and partly to absence of proper supervision and chalking out of suitable improvement schemes on modern lines, it is considered necessary with a view to achieving the improvement of such neglected urban areas, to provide for the establishment of improvement trusts to

empower them to raise funds to frame improvement schemes, to execute them and to exercise some municipal powers during such executions. The Bill is designed to achieve that purpose. The powers given to the trusts to be constituted there under are wide enough but as they have been sufficiently subjected to the Government Control, they are free from risk of all sorts. The rights of private persons have also been sufficiently protected in as much as all disputes arising between them and the Trusts are to be referred to the District Judge, from whose decision an appeal will lie to the High Court."

52. Section 52(1) of the Improvement Act permits the acquisition by the State Government to acquire land under and in accordance with the provisions of the Land Acquisition Act. Therefore, the publication of the notifications under Sections 4 and 6 could not be invalidated on the ground that the acquisition should alone be under the Improvement Act. Consequently, this argument of the petitioner's counsel has also no merit and it is rejected.

53. In *Gandhi Grah Nirman Sahkari Samiti's* case (supra), the Supreme Court, by interpreting Section 52(1) of the Improvement Act and other provisions, came to the conclusion that acquisition could be under the Land Acquisition Act even in respect of improvement.

54. Attack of the learned counsel for the petitioner that the proceedings of acquisition could not be taken under the two Acts is to be stated only for rejection. There is no impediment or bar in the power of the State Government to acquire land for public purpose in accordance with the Land Acquisition Act. The petitioner has not made any allegation of mala fide. In fact, such a ground does not exist in the instant case.

55. For the reasons given above, the writ petition fails and is dismissed with costs of Rs. 500/- (Rs. five hundred only) to be payable to the State Government.