

(1969) 09 MP CK 0003
In the Madhya Pradesh High Court
Case No : C.R. No. 211 of 1969

Sardarmal and others

APPELLANT

Vs

Collector, Sehore

RESPONDENT

Date of Decision : 30-09-1969

Acts Referred:

Land Acquisition (Madhya Pradesh Amendment) Act, 1959 — Section 3
Land Acquisition Act, 1894 — Section 18

Citation : (1972) MPLJ 341

Hon'ble Judges : K.L. Pandey, J; A.P. Sen, J

Bench : Division Bench

Advocate : R.C. Agarwal, for the Appellant; K.P. Munshi, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Pandey, J.

This order shall dispose of Civil Revisions Nos. 242, 248, 249 and 250 of 1969 also. All these revisions arise out of proceedings in the lower Court following references made u/s 18 of the Land Acquisition Act, 1894. By section 3 of the Land Acquisition (Madhya Pradesh Amendment) Act, 1959 (5 of 1959), the Land Acquisition Act, 1894, in its application to the Bhopal area, was amended as follows:

(1) After clause (g) of section 3 of the Act of 1894, a new clause was added denying "Bhopal area".

(2) A new section, section 17-A, was inserted in the Land Acquisition Act, 1894, giving to the Government the power To issue a direction to the Collector that it is urgently necessary to acquire immediate possession of any building site situated in Bhopal area, and providing that upon the Use of such a direction the provisions of section 17 would, in all respects, apply in the case of such site as they apply in the case of waste or arable land.

(3) A new proviso was added to the first clause of section 23 (1). The proviso runs thus :-

Provided that when the market value of any land situate in Bhopal area, in respect of which the date of publication of the notification aforesaid is after the commencement of the Land Acquisition (Madhya Pradesh" Amendment) Act, 1957 (21 of 1958), is in excess of its market value as on the 1st day of October, 1955, the market value thereof shall be deemed to be its market value as on the 1st day of October, 1955.

(4) A new sub-section (3) was inserted to section 23 enjoining the Court to award a further sum not exceeding twenty-five percent of the market value of the land acquired and an additional sum provided under sub-section (2), as the Court may think fit, "in consideration of the appreciation in the price of the land concerned by reason of the location of the Capital at Bhopal, regard being had to the situation of such land.

It was urged in the lower Court that the amendment, limiting, as it did, the compensation payable for land to be acquired thereafter to the market value of that land on October 1, 1955 together with a certain percentage of such value not exceeding 25 per centum irrespective of the distance of time between that date and the date of acquisition was unconstitutional. It was also argued that the contrary view taken by a Division Bench of this Court in *Sansh Kumar v. State of M.P.* 1961 M.P.L.J. 881 must be regarded as overruled by *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, By similar orders passed in these five cases on January 2, 1969, the lower Court overruled the two contentions. Being aggrieved, the claimants have made these applications invoking the jurisdiction of this Court u/s 115 of the CPC to get those orders revised

The first question for Consideration is whether such a plea can be raised in proceedings grounded on a reference u/s 18 of the Land Acquisition Act. 1894. Sub-section (1) of that: section reads:

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested..

Long ago, a Division Bench of the Calcutta High Court stated :

The object of the reference u/s 18 of the Act is to secure the judicial ascertainment of the value of the property acquired, and other matters strictly incidental thereto, and not to determine whether the whole proceeding before the Collector was bad, and the award was illusory as a fraud upon the Act and an evasion thereof by merely nominal compliance with its provision a *Raghunath Das v. Collector of Dacca* 11 C.L.J. 612 p. 615. In AIR 1930 64 (Privy Council) ,

their Lordships referred section 18 (1) of the Act and observed :

The section clearly specifies four different grounds of objection, viz: (1) to the measurement of the land; (2) to the amount of compensation; (3) to the persons to whom it is payable and (4) to the apportionment. The distinctions between objection to area and to amount of compensation are also borne out by other sections of the Act; see Sections 9, 11, 19 (d) and 20(e). The appellant's objection was manifestly only to the amount of compensation and was correctly so described by the Collector in making the references. By section 20, the function of the Court upon a reference being made is "to determine the objection" and only persons "interested in the objection" are to be summoned before it, and by Section 21 the scope of the enquiry is to be:

...restricted to a consideration of the interests of the persons affected by the objection. Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred and the Court has no power to determine or consider anything beyond it.

In *State of Bihar and Another Vs. Kundan Singh and Another*, , their Lordships stated:

Section 19 (1) provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. It is thus clear that the scope of the enquiry u/s 18 (1) is specifically indicated by the section itself. The objections which the Court can consider on a reference made to it u/s 18 may be either in respect of the measurement of the land, the amount of compensation, the persons to whom it is payable and the apportionment of the compensation among different persons. In dealing with the question about the amount of compensation, the Court may have to take into account the matters specified in section 23. As was observed by the Privy Council in *Pramatha Nath Mullick v. Secretary of State* (Supra), the section clearly specifies four different grounds of objection which can be the subject-matter of an enquiry in reference proceedings.

Although the arguments addressed to us on this point covered a wide ground and our attention was invited by analogy to references under the taxes' statutes, it was, in the end, conceded by the counsel for the applicants that, in view of the authoritative pronouncements of the Privy Council and the Supreme Court, the jurisdiction of the Court acting u/s 18 of the Land Acquisition Act, 1894 was a special one and that it was strictly limited to a consideration of the four different

grounds of objection therein mentioned.

It was, however, argued by Shri Banerjee that the jurisdiction to consider an objection relating to compensation with reference to the matters specified in section 23 of the Land Acquisition Act, 1894, necessarily implied jurisdiction to consider whether any amendment engrafted on that section was constitutional. He made the point that such consideration was, in effect, an ascertainment of the matters which could legally be taken into account in determining the compensation and was in that sense strictly within the rule laid down in *Pramatha Nath v. Secretary of State* (Supra) and *State of Bihar v. Kundan Singh* (Supra). In support of this view, the counsel relied upon *N.B. Jeejeebhoy Vs. Assistant Collector, Thana Prant, Thana, and Balammal and Others Vs. State of Madras and Others*, wherein the constitutional validity of the relevant enactments was successfully challenged in appeals arising out of land acquisition references. The point whether such a question could be considered in land Acquisition references or appeals arising therefrom was neither raised nor decided. As at present advised, we are inclined to think that a question of this nature is outside the scope of the special jurisdiction u/s 18 of the Land Acquisition Act, 1894, Since we are not pronouncing any considered opinion on the question, we would here assume that, in the sense contended for, it can be raised but, as we would show immediately, there is, we think, no substance in the main ground urged before us in support of the invalidity of the Land Acquisition (Madhya Pradesh Amendment) Act, 1959.

As we have already indicated, the question of constitutional validity of the Land Acquisition (Madhya Pradesh Amendment) Act, 1959, has already been decided by this Court in *Satish Kumar v. State of M.P.* (Supra) In the course of arguments submitted to this Court in support of the contention that *Satish Kumar's* case should be regarded as impliedly overruled by the Supreme Court, reference was made to a number of decisions of that Court One of them is *State of Madras Vs. D. Namasivaya Mudaliar and Others*, . In that case, the Madras Lignite (Acquisition of Land) Act, 1953, was held to be invalid as infringing Article 31 (2) of the Constitution before it was amended by the Constitution (Fourth Amendment) Act, 1955, which came into force on April 27, 1955. In *Union of India (UOI) Vs. Kamlabhai Harjiwandas Parekh and Others*, , the same view was taken about the Requisitioning and Acquisition of Immovable Property Act, 1952. In *N. B. Jeejeebhoy v. Assistant Collector, Thana* (Supra), a pre-Constitution Act was, for a similar reason, struck down as offending section 299 (2) of the Government of India Act, 1935, in regard to compensation payable for acquired lands. The first two cases were decided on the basis of the law declared in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, and *The State of West Bengal Vs. Bela Banerjee and Others*, which exposed the true meaning and effect of Article 31 of the Constitution before it was amended by the Constitution (Fourth Amendment) Act, 1955. This law, however, ceased to apply to enactments made after the Constitution (Fourth Amendment) Act, 1955. That being so, the three cases relied upon in the course of arguments, which we have

mentioned earlier, are of no assistance to the applicants

In Union of India (UOI) Vs. The Metal Corporation of India Ltd. and Another, , the Metal Corporation of India (Acquisition of Undertaking) Act, 1965, was declared to be un-constitution. That decision was, however, expressly overruled by a larger Bench of the Supreme Court in State of Gujarat Vs. Shantilal Mangaldas and Others, . Para. 50

The sheet anchor of the arguments on behalf of the applicants which Shri Banerjee forcefully presented to us is the decision of the Supreme Court in Vajravtlu v. The Special Deputy Collector (Supra). In regard to that case, Hidayatullah G. J. observed in State of Gujarat v. Shantilal (Supra) as follows :

I have read the weighty judgment proposed to be delivered by my brother Shah and I find myself BO much in agreement with it that I consider it unnecessary for me to express myself. However, it is proper for me to say a few words in explanation since I was a party to P. Vajravelu Mudaliar's case Supra) and the obiter pronouncement of some opinions there That ease was heard with N. B. Jeejeebhoy's case (Supra). One was a post-Constitution (Fourth Amendment) case and the other a pre-Constitution ease. The judgments in the two eases were delivered on the same day. It appears that the reasoning in the two cases was not kept separate and the whole of the matter was discussed in a ease in which it was not necessary for the ultimate conclusion. Because of the close proximity of the decisions) it escaped me that the discussion was in the wrong ease and the other merely followed it. My brother Shah has now made the two cases to fall in their proper places. It is certainly out of the question that the adequacy of compensation (apart from compensation which is illusory or proceeds upon principles irrelevant to its determination) should be questioned after the Amendment of the Constitution, ".the Amendment was expressly made to get over the effect of the earlier cases which had defined compensation as just equivalent. Such a question could not arise after the amendment. I am in agreement that the remarks in p. Vajravalu"a case (Supra) must be treated as obiter and not binding on us. I am also of the opinion that the Metal Corporation case (Supra) was wrongly decided and should be overruled.

It is plain enough that the observations in Vajravelu's case which had a bearing on the pre-Constitution Act that was struck down in Jeejeebhoy's case, can have no relevance on the present controversy arising in relation to the validity of a post-amendment enactment.

Reliance is, however, placed on the following observations of the Supreme Court in State of Gujarat v. Shantilat (supra) :

Principles may be challenged on the ground that they are irrelevant to the determination of compensation, but not on the plea that what is awarded as a result of the application of those principles is not just or fair compensation. A challenge to a statute that the principles specified by it do not award a just compensation will be in clear violation of the constitutional declaration that

inadequacy of compensation provided is not justifiable.

Whatever may have been the meaning of the expression "compensation" under the on" amended Article 31 (2) , when the parliament has expressly enacted under the amended clause that "no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate", it was intended clearly to exclude from the jurisdiction of the Court an enquiry that what is fixed or determined by the application of the principles specified aa compensation does not award to the owner a just equivalent of what he is deprived. Any other view is contrary to the plain words of the amendment: it is also contrary to the ultimate decision of the Court in P. Vajravalu's case (Supra) that the principles specified by the Court which did not award what may be called a just equivalent were still not open to question.

As we would show immediately, these observations also are of no help to the applicants.

It is argued that for land that is compulsorily acquired, market value at a date anterior to the date on which the title of the owner is extinguished is altogether irrelevant to the determination of compensation because it should properly be based on its market value at the date of extinguishment of title. For several reasons, be are unable to accept this submission. In the first place, even under the un-amended Land Acquisition Act, 1894, the relevant date for determining compensation is anterior to the date on which the property acquired vests in the State, secondly, determination of the market value at an anterior date is not altogether irrelevant because "he consequence merely is that it does not take into account the subsequent rise in the n market price but, here, as a substitute for this rise, the impugned enactment requires that an amount not exceeding 25 per centum of the value so determined shall be added to it. It may well be that this additional amount does not adequately represent the rise in the market price but mere inadequacy of compensation is, as shown, not a ground available for challenging a statute enacted after the Constitution (Fourth Amendment) Act, 1955. Finally, in state of Gujarat v. Shantlal (Supra), the Supreme Court held that the fact that considerable time had elapsed since the declaration of the intention to make a scheme (at which date the market value had to be determined under the Act there impugned for payment of compensation) could not be a ground for declaring the section ultra vires (paragraph 52).

It is, however, argued that compensation payable under the impugned enactment is illusory. In our view, mere inadequacy of compensation cannot be allowed, after the Constitution (Fourth Amendment) Act, 1955, to be put forward as a ground for challenge in the new garb of being illusory. It is not as if what has been determined lo be payable to the applicants is so ridiculous as to amount to saying that a property worth lakhs of rupees was acquired for a paltry sum of Rs. 100/-, an illustration given in paragraph 15 of the judgment in Vajravelu's case (Supra). In our opinion, there is, in these cases, noba-is for the contention that the compensation payable under the impugned enactment is illusory.

Shri R.C. Agarwal, who appeared for some of the applicants, has made the further point that the impugned enactment is void as offending Article 4 of the Constitution. He has founded the argument on these facts. Bhopal became the capital of the new State of Madhya Pradesh on November 1, 1956. It was in 1958 that the Land Acquisition (Madhya Pradesh Amendment) Act 21 of 1958 was placed on the Statute book. It was later followed by the impugned Act (5 of 1939). For those whose lands were acquired and taken before the commencement of Act 21 of 1958, compensation was paid under the un-amended Land Acquisition Act, 1894. For others whose lands were acquired thereafter, lesser compensation was paid under the impugned Act. There was thus differentiation between those whose lands were acquired before the commencement of the Act and those whose lands were acquired afterwards. It is argued that lands were required for the capital project right from November 1, 1956, and the State missed the bus when it failed to make a law like the impugned enactment operative from that date. We are unable to accept this contention for, in our view, the legislative classification need not be scientifically perfect or logically complete and we think that it is permissible for the Legislature of a State to enact a law operating from a particular date applying generally to all transactions coming within its ambit and it is not rendered invalid as offending Article 14 of the Constitution only because it does not apply to other transactions which look place before the commencement of that law. So, in *Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others*, at p. 931, the Supreme Court observed :

The State is undoubtedly prohibited from denying to any person equality before the law or the equal protection of the laws, but by enacting a law which applies generally to all persona who come within its ambit as from the date on which it becomes operative, no discrimination is practiced. When Parliament enacts a law imposing a liability as flowing from certain transactions prospectively, it evidently makes a distinction between those transactions which are covered by the Act and those which are not covered by the Act, because they were completed before the date on which the Act was enacted. This differentiation, however, does not amount to discrimination which is liable to be struck down under Article 14.

In *Vajravelu's case (Supra)*, Article 14 of the Constitution was successfully invoked because there land could be acquired for the same purpose under two separate enactments having different provisions relating to payment of compensation. That is not the position here. In the end, we may add that the challenge to the Act impugned before us on the ground that it offends Article 14 of the Constitution was negated by a Division Bench of this Court in *Satish Kumar v. State of M.P. (Supra)*.

Since all the grounds urged before us have failed, these applications for revision are dismissed with costs. Hearing fee in each case Rs. 100/-.