

(2000) 11 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4039 of 2000

Smt. Sudharshana Devi and Others	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 16-11-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 23, 4, 52, 6
Specific Relief Act, 1963 — Section 13, 20

Citation : (2000) 4 RLW 688 : (2001) 1 WLC 730 : (2007) 2 WLN 352

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned counsel for the. petitioner.

2. The petitioner, who claims to be allotted land in Sukhadia Nagar vide order dated 8.7.1983 Plot No. 3A-30 has challenged the communication dated 5th September, 2000 from the Dy. Secretary, Government of Rajasthan that as per directions that the land acquisition proceedings in pursuance of notification dated 8.7.1992 u/s 4 of the Land Acquisition Act and declaration dated 30th October, 1993 u/s 6 for implementing the Sukhadia Nagar project has lapsed because no award was made within the period prescribed u/s 11A. He further communicated that as per the report dated 20.7.2000 over the land under the acquisition a large number of houses have already been constructed, therefore, it is now not desirable to proceed with the acquisition proceedings of the land referred to in the award and it was further directed that the constructed houses on the land in question may be regularised in accordance with the law concerning regularisation of such allotments.

3. It is contended by the learned counsel for the petitioners that the impugned order in stating that the land acquisition proceeding stated lapsed on the basis of Division Bench decision of this Court in Sudharshana Devi v. State of Rajasthan in D.B. Special Appeal No. 438/2000 decided on 30th May, 2000 is apparently

erroneous inasmuch as no question as to validity or otherwise of the land acquisition proceedings relating to the land in question has been decided by the Division Bench and the decision given in that regard by the learned Single Judge in S.B. Civil Writ Petition No. 1493/2000 on 18.5.2000 that the land acquisition proceedings have lapsed was not held to be binding as it was not necessary for the decision of the case. It was also contended by the learned counsel that they are entitled to get the same land allotted to them under the allotment letter dated 8th July, 1983-Annexure 5 inasmuch as the land even if it became the property of the respondent Urban Improvement Trust after the order of allotment was issued, they are still entitled to enforce the allotment letter issued in their favour by applying provision of Section 13 of the Specific Relief Act. In this connection, it was contended by the learned counsel for the petitioner that they base their case on the premise that the land acquisition proceedings commenced by the Urban Improvement Trust, Shri Gangangar vide notification dated 8th July, 1987 published in the Rajasthan Gazette dated 30th July, 1987 continues to hold the field in view of the amendment in the Urban Improvement Trust Act by insertion of Section 60A with the previous assent of the President in 1995. Therefore, the land having already vested in the Urban Improvement Trust, they are entitled to enforce the letter of allotment in their favour, notwithstanding lapse of the proceedings of the land acquisition that commenced in respect of very same land by issuing a notification u/s 4 of the Land Acquisition Act, 1894 on being published in the Rajasthan Gazette dated 8th July, 1992 in pursuance of which declaration u/s 6 was also published on 30th October, 1993 because of the not making of award within the time provided u/s 11A of the Land Acquisition Act.

4. Mr. M.S. Singhvi learned counsel appearing for the respondent caveators urged that the petitioners were allotted land when the Urban Improvement Trust has no jurisdiction over the land in question and such allotment did not give them any right which could even be enforced through a decree for specific performance of an agreement to sell. They have no locus to intermeddle with the land acquisition proceedings which have subsequently commenced and taken their course under law through various stages. A remedy against the said order of allotment Annexure-5 which at best cannot amount anything more than an assurance to allot the land if, as and when, the land in question becomes the property of Urban Improvement Trust and through such an assurance to allot land inasmuch as on the date the allotment letter was issued no right was created even to enforce the same in favour of the petitioners. They are alien to the land acquisition proceedings which commenced thereafter and therefore, they have no locus to invite attention to the legality and validity or otherwise to such proceedings. It was also urged by Mr. Singhvi that the notification dated 8th July, 1987 was invalidated by this Court in 1991 by order dated 12.9.1991 passed in S.B. Civil Writ Petition No. 1683/91. Since as on the date Section 60A was inserted in 1995 no proceedings were pending in respect of the land in question under the Urban Improvement Trust Act which could be revived. It was further contended that even before amendment have come into force in 1995,

the State Government and the Urban Improvement Trust having accepted the judgment had opted to resort to the fresh land acquisition proceedings for the very same land at the behest of the Urban Improvement Trust and issued a notification u/s 4 of the Land Acquisition Act, 1894 in respect of the same land for the very same purpose. Therefore, the proceedings, not only stood quashed by the order of this Court referred to above but stood superseded by the act of acquisition authority by issuing fresh notification to fulfil its purpose, and therefore, only the proceedings which could be carried to legitimate conclusion would be the new proceedings initiated in 1992 which were pending proceedings as in. 1995 when new Section 60A was inserted. It was also urged that the remedy, if any, under plea raised by the petitioners is to seek specific performance of letter of allotment dated 8th July, 1983 by filing a civil suit in an appropriate civil court. Such a recourse would also become barred by the time the present writ petition was filed inasmuch as if the contention of the petitioners is accepted that the land became vested in Urban Improvement Trust in 1987 then right to enforce that agreement arose in 1987 and a suit for specific performance of the agreement to allot land vide Annexure-5 ought to have been filed within the period of limitation w.e.f. that date. Assuming that right arose once again in 1995 because of the validation Act, the suit for specific performance of the agreement as on date of filing of this writ petition would still be barred by time. Ordinarily extraordinary jurisdiction ought not to be invoked in aid of enforcement of stale claims for which remedy under ordinary law has become barred by time as it would entail indirect refuting the scheme of debarring adjudication of stale claims.

5. These facts are not in dispute before me that in the first instance a notification to acquire the land in question u/s 4 of the Rajasthan Land Acquisition Act has been issued on 23rd April 1980 and declaration u/s 6 had been issued on 11th March, 1981 along with notice u/s 17(4) of the said Act and possession in pursuance thereof had also been taken. However, the said acquisition proceedings were quashed by order of this Court dated 6.5.1983. It is after the said acquisition proceedings have been quashed and before the fresh acquisition proceedings have even been initiated that allotment letters have been issued for allotting the land in question which undisputedly was not vesting in the Urban Improvement Trust on the date of such allotment. Though he had deposited part of the allotment price envisaged under allotment, the possession in pursuance of that allotment had never been given to the petitioners. As noticed above the issuance of notice u/s 52 of the Urban Improvement Trust Act on 30th July, 1987 in the first instance again proved to be abortive inasmuch as the same was quashed by this Court on 12.9.1991. This order was not challenged either by the State Government or by the Urban Improvement Trust, the acquiring authority, for whom the land was to be acquired. Thereafter, on the request of the Urban Improvement Trust another notification u/s 4 of the Land Acquisition Act was issued on 8th July, 1992 for the very same purpose and declaration u/s 6 was also issued on 30th October, 1993. However, no award could be made in respect

of the said land in pursuance of the acquisition proceedings until 1999. In the first instance the Land acquisition Officer has submitted an award by accepting 11th March, 1981, the date of the first notification, which stood quashed in 1983, for determining the market value of land and quantum of compensation payable by the Urban Improvement Trust for disbursement to the awardees. The State Government pointed out that notification u/s 4 of the Land Acquisition Act was issued only in 1992, there is no justification for taking the date of 1981 as the basis for the purpose of determining the compensation which has to be determined u/s 23(1) of the Act of 1894 under which proceedings had been taken at the market price of the land in question as on the date of the notification u/s 4 of the Act.

6. As sufficient period had elapsed since the allotment letters were issued by the Urban Improvement Trust in 1983 and its efforts to secure the rights over the land in question, have successively failed. Out of 225 allotments made in 1983, 11 persons were left out who could not be given land. It was thought advisable that the Urban Improvement Trust allot some alternative land of equal value to those 11 persons so as to settle the equity. This order dated 26th April, 2000 issued by the State Government was challenged by the present writ petitioners in S.B. Civil Writ Petition No. 2834/2000. That writ petition was dismissed inter alia on the ground that the proceedings of the acquisition had lapsed and the petitioners cannot have subsisting right in respect of that land by the learned Single Judge. On appeal, the Division Bench held that since the question of validity of land acquisition proceedings were not before the court, nor the order spoke about lapsing of proceedings, there was no occasion to go into the question whether the acquisition proceedings commenced in 1992 had lapsed or are still pending. It was further held that no direction can be issued either to allot the very same land to the petitioner as was identified in 1983 in the circumstances of this case, in which even on petitioners' own showing land acquisition proceedings, even if the same are held to be pending, are not completed. The question of validity of pendency of the acquisition proceedings was not decided expressly. However, the court further observed that it is true that the order appears to have been made in the interest of petitions only who were awaiting allotment of land since 1983. It is equally true that if the land under acquisition is not-available for any reason, the same cannot be allotted to the petitioners. In such event, the only viable solution available for the State was to offer alternative land. It is for the petitioner either to secure alternative land offered by the State or to get refund of the amount deposited by them. If the petitioners are not willing to accept the option for securing alternative land in place of earlier allotted land because of non availability of the land" immediately, which may or may not be available in future also, it is their option but no issue arose about the validity of the land acquisition proceedings of 1992. In the present circumstances, it was beyond the scope of the writ petition and to that extent the order cannot be sustained.

7. Thereafter the Dy. Secretary by his communication dated 5th September,

2000 conveyed the direction of the State that because the courts have already held that the proceedings have lapsed and that now there is no justification to acquire the land in question, necessary proceedings may be taken for regularisation of the land and most part of which is constructed. The petitioners have challenged this order for the reasons stated hereinabove. The observation made by the Division Bench in earlier case, in my opinion, still holds good. The fact that the petitioner was given a letter of allotment when the Urban Improvement Trust grantee had no interest in the land makes it abundantly clear that the allotment itself does not give any right to the petitioner to enforce that letter against the Urban Improvement Trust. The petitioner raises the contention on the basis that after the allotment was made in favour of the petitioner, the land stood vested in Urban Improvement Trust vide notification dated 8th July, 1987 and published on 30th July, 1987 possession had already been with the Urban Improvement Trust under the earlier proceedings which have been held to be void, there was no impediment so far as the Urban Improvement Trust is concerned to deliver the possession of the land in his favour since vesting took place in 1987.

8. As noticed above, since the allotment much water has flown, 1987 proceedings had been held to be invalid by this Court in a judgment which was never challenged and even now it is not said that the judgment was bad for any reasons other than the subsequent amendment which may result in validating the action taken on 30th July, 1987. Moreover a judgment of the court, unless reversed or set aside, remains binding and operative so far as the dispute it decides. Merely because, ratio of the decision or legal principle has wrongly been applied, does not lose its binding effect on the lis it decides, notwithstanding, it may lose its efficacy as a binding precedent, even if it is held to be impliedly overruled. Overruling of a decision in its effect is vitally different from reversing of a decision. The former destroys its force as binding precedent, without affecting the actual result of the lis it decides, in the latter case the efficacy of judgment is lost both as a precedent and decision of lis.

9. The fact remains that after the said notification was quashed in 1991 immediately thereafter at the behest of the Urban Improvement Trust the State Government has resorted to fresh acquisition proceedings under the Land Acquisition Act, 1894 in 1992 and also issued a declaration u/s 6 and the Land Acquisition Officer had also proceeded to complete those proceedings. Thus, with the quashing of notification under Urban Improvement Trust Act by a judicial pronouncement, followed fresh land acquisition proceedings when no other proceedings were pending and as on the date amendment in Raj. U.I.T. Act came into force in 1995, only valid proceedings pending were under Land Acquisition Act under notification of Section 4 dated 8.7.1992. Thus the seed of proceedings under Urban Improvement Trust Act dated 30.7.1987, stood extinct. In such case revival of proceedings under Urban Improvement Trust Act could not arise.

10. In some-what similar circumstances, a question arose before the Supreme

Court in *Raghunath and Others Vs. State of Maharashtra and Others*, It was a case in which successive declarations were issued under Sections 4 & 6 of the Land Acquisition Act, 1894 by State of Maharashtra of which only declaration u/s 6 was quashed by the court. Subsequently thereto another notification u/s 4 was issued covering some land which was already covered under the earlier notification u/s 4. A question was raised whether invalidity of declaration u/s 6 invalidates whole proceedings including notification u/s 4 also and it needed to resort to fresh acquisition proceedings or Section 4 notification of earlier date still survived. The contention raised was that if Section 4 notification is held to be void, all proceedings thereafter including declaration u/s 6 cannot be sustained. Likewise once a declaration u/s 6 was issued, the notification u/s 4 stood merged with it. Hence when declaration u/s 6 was quashed, notification u/s 4 did not revive. That contention was negated by the Supreme Court by holding that the declaration u/s 6 of the Land Acquisition Act if declared to be invalid, does not result in invalidating notification u/s 4 and the same proceedings could continue from that stage. However, keeping in view and taking into consideration the principle that subsequent to quashing of declaration u/s 6 a valid notification u/s 4 still survives, yet when a fresh declaration u/s 4 had come into existence the real question, therefore, was whether proceedings could continue under the previously issued, or the proceedings could continue only under the fresh notification. The Court observed:

Before concluding, we must refer to one circumstance which was brought to our notice by learned counsel for the petitioners and which has also been noticed in the judgment of the High Court. It appears that, between the date of withdrawal of the earlier writ petition (namely, 23rd August, 1983) and the issue of the second, declaration u/s 6 (namely, 4.4.1985), the Government had issued a fresh notification u/s 4 for the acquisition of certain lands. The lands in the two notifications u/s 4 do not completely overlap but it appears that some fields are common in both. No declaration u/s 6 appears to have been issued in furtherance of the second notification u/s 4 when the High Court heard the matter. Learned counsel for the petitioner points out that, at least in respect of such of the lands comprised in the Section 4 notification dated 22.6.1982 as are also covered by the subsequent notification u/s 4, it is legitimate to infer that the State Government has superseded the earlier notification by the latter one. This contention is clearly well founded. We would, therefore, like to make it clear that in respect of the lands covered by the first notification u/s 4 which are also covered by or comprised in, the second notification u/s 4, further proceedings regarding acquisition should be taken, in accordance with law, only in pursuance of the latter notification and the proceedings initiated in respect of such lands by the first notification dated 22.8.1982 should be deemed to have been superseded.

11. This principle aptly governs the facts of the present case where for like reason declaration u/s 52 of the Urban Improvement Trust Act was held to be invalid vide judgment dated 12.9.1991, that since commencement of Land Acquisition (Amendment) Act a Central Legislation, the State enactment on

acquisition could not govern the proceedings unless amendment in State Acts are made with the previous approval of the President. Since amendment in Urban Improvement Trust Act in 1987 was not with the assent of President, it could not override the Central enactment operating on the same subject. That is not in dispute that earlier amendment in 1987 was not with the assent of the President. No exception to applicability of this principle even now has been raised. Thus since the quashing of proceedings under Urban Improvement Trust Act commenced in 1987, no operative proceedings were in existence as on the date Notification u/s 4 of the Land Acquisition Act, 1894 was issued in respect of the very same land once again with its publication on 8.7.1992 and new proceedings came into being, which was not in supersession of any existing filed but on empty ground. It for the very same land new acquisition proceedings were commenced by issuing notification dated 6.7.1992 u/s 4 of the Land Acquisition Act published in Gazette dated 8.7.1992 all other proceedings even if pending in pursuance of earlier notifications of said land stood superceded by the new and subsequent notification issued u/s 4 and the acquisition thereafter could continue there under only, present is a case no proceedings could be said to be even pending on the date.

12. In these circumstances, the present case stands on a stronger footing. There is no dispute that notification u/s 52 of the Urban Improvement Trust Act issued on 8.7.1987 was quashed by this Court vide its judgment dated 12.9.1991. The validity of that judgment was never challenged by any one. The said judgment became final and operative. The contention of Mr. Purohit that the aforesaid judgment in applying the principle was erroneous, in the light of subsequent decision of the Supreme Court, can, even if be accepted, only result in implied overruling of the ratio, but cannot have the effect of reversal of judgment so as to nullify its effect. Since quashing of notification u/s 52 of the Urban Improvement Trust Act, no proceedings vide U.I.T. Act were governing the land in question, when notification dated 6.7.1992 u/s 4 of the Land Acquisition Act was published on 8.7.1992, instituting fresh acquisition proceedings. Therefore, as on the date of notification u/s 4 or u/s 4 of the Land Acquisition Act, the question of any surviving proceedings under which such acquisition could proceed simply did not arise, and the new proceedings could only hold the field. The question of revival of proceedings under Urban Improvement Trust Act by dint of Section 60A simply could not arise in respect of such dead proceedings. Only proceedings which could continue and fructify in acquisition could be instituted u/s 4 of the Land Acquisition Act vide notifications dated 6.7.1992.

13. There is also some force in the contention of the learned counsel for the respondent caveators that the petitioner is indirectly seeking a decree for specific enforcement of the allotment letter Annexure 5 by way of this writ petition. If the petitioner's plea is to be accepted the notification for acquisition of land under Urban Improvement Trust Act was issued on 30th July, 1987, the notification has been quashed only in 1991 notwithstanding allotment having been made in 1983, petitioner has made no efforts to seek possession of the land in question

from the Urban Improvement Trust either by insisting on to accept the balance payment or by demanding the alternative land or taking proceedings for specific performance. Even after the quashing of the order in 1991 the petitioner has kept silence at that stage. Allotment order could not have been enforced. Even after 1995 when Section 60A was inserted in the Urban Improvement Trust Act and according to the petitioner the acquisition proceedings of 1987 are revived and as the land stood vested in the Urban Improvement Trust, which was in its possession, there was no impediment in the way of the petitioner to secure enforcement of allotment letter in his favour by the Urban Improvement Trust by recourse to Section 13 of the Specific Relief Act or invoking the doctrine of estoppel. However, the petitioner kept silence until 2000 when the State Government in the totality of the circumstances decided to withdraw from the acquisition proceedings and offer alternative land to the petitioner as only 11 out of the 225 allottees in 1983 had not taken possession of the land from the Urban Improvement Trust and since now the willingness to continue the acquisition proceedings was not there, the Urban Improvement Trust instead of falling back on the doctrine of frustration of agreement had decided still to allot land in fairness by offering alternative land of the equal value as the land promised to be allotted. It is clear that as on the date allotment letter was issued the U.I.T. did not have any authority to allot the land in question inasmuch as the land neither belonged to U.I.T. nor any acquisition proceedings were pending in respect of said land. The petitioner could not at any time have insisted to act upon that allotment by seeking a mandamus to U.I.T. to acquire the land and allot it to them. Section 13 of the Specific Relief Act only enables the proposed vendee to enforce the agreement to sell if the immovable property becomes the property of the vendor even subsequently. But it does not entitle the proposed vendee to seek a relief for issuing mandamus to the vendor to acquire the land of others compulsarily for the purpose of allotment to the proposed allottee. This is exactly what the petitioners are seeking through this petition to secure a mandamus to acquire the land and deliver it to them. Moreover, Court on the earlier occasion opined as noticed above and as referred in the earlier decision that the respondent State has acted fairly in offering alternative land to the petitioners in the fact of the present case, but it is the choice of the petitioner to accept alternative land or not. It may be noticed that u/s 20 of the Specific Relief Act also to grant a decree for specific performance is in the discretion of the court and not absolute right of the proposed vendee under proposed transfer under such agreement. The relief for specific performance of any contract being in nature of equitable relief, if the circumstances of the case do not warrant notwithstanding existence of a valid agreement, the plea of specific performance can be negated by awarding adequate compensation in lieu thereof. In the present case, the State Government has shown its willingness to offer alternative land. In the circumstances narrated above the long drawn efforts of acquisition proceedings successively proved to be futile, most of the land in question being already under occupation and the cost which for new acquisition proceedings may be required to be incurred only for the purpose of fructifying allotment of

land to left out persons through compulsory acquisition of land, the authorities acquiring the land felt it better to withdraw from the acquisition and offer the person under assurance through letter of allotment dated 8.7.1983 alternative land of same value the action could be said to be unreasonable or inequitable. In all 225 persons had been issued allotment letters in 1983 of which now only 11 persons remain to be satisfied. For satisfying the claim of only 11 persons, the cost of acquisition of entire land will be highly excessive. In these circumstances, when the petitioner, who is not directly concerned with the acquisition proceedings, nor petitioner has a right to seek a mandamus to enforce the acquisition for the purpose of enforcing allotment letter without land in question actually vesting in Urban Improvement Trust it would not be furthering cause of equity and justice to invoke extraordinary jurisdiction for directing a mandamus for such specific performance of an agreement, moreso when prima facie it appears that even if a civil suit for specific performance were to be filed as on the date this petition was filed, it would be barred by time.

14. In the totality of the circumstances, I am of the opinion that granting of mandamus, in the facts and circumstances of the present case particularly when the respondents have shown their willingness to offer alternative land of the same value in place of one sought to be allotted in 1983, when the land did not vest in U.I.T. and thereafter too after number of attempts to acquire that land did not still fructify in clearing the clouds, and Division Bench of this Court has already observed that respondents have acted fairly in giving option to the petitioner either to accept alternative land or to get refund of the deposited amount, it is not a fit case to invoke extraordinary jurisdiction of this Court.

15. The petition, therefore, fails and is hereby dismissed.

16. No costs.