
(2003) 05 MP CK 0076
In the Madhya Pradesh High Court
Case No : L.P.A. No. 1316 of 2002

Surila Khatri (Smt.) and Others	Vs	APPELLANT
State of MP. and Others		RESPONDENT

Date of Decision : 16-05-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 4, 5A, 6
Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 50(7)

Citation : (2004) 1 JLJ 210

Hon'ble Judges : S.K. Seth, J;Deepak Verma, J

Bench : Division Bench

Advocate : Ajay Bagadiya, for the Appellant; Shekhar Bhargava, R. Bhargava and Pal and Mukhoti, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Seth, J.—Appellants, having lost before the learned Single Judge in the Writ Petition, are before us in this intra-Court appeal, under Clause X of the Letters Patent.

2. Appellants claim that they are the joint owners of plot bearing Survey No. 3393/3 admeasuring 0.618 hectare situated in Ujjain. It is alleged that they had purchased it through a registered sale deed dated 20.11.2001 from Shashikant and other two co-owners. The plot in question and other adjoining parcel of land were the subject-matter of acquisition proceedings in which Land Acquisition Officer, Ujjain passed the Award on 15.2.2002 pursuant to the Notification issued u/s 50(7) of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereafter referred to as 'the Adhiniyam' for short) read with the Notification issued u/s 4 and followed by Section 6 of the Land Acquisition Act, 1894 (hereafter referred to as 'the Act' for short). Appellants challenged before the learned Single Judge, acquisition of their plot bearing Survey No. 3393/3 on various grounds. Learned Single Judge, after hearing counsel for respective parties, found no merit and substance in the writ petition and dismissed the same by Order dated

21.10.2002, which, as mentioned above, is under challenge before us.

3. Before us, Shri Ajay Bagadiya, learned Counsel appearing for the Appellants urged that as the plot in question was not included and shown in either of the Notifications issued u/s 50(7) of the Adhiniyam or Section 4 of the Act, therefore, the same could not be acquired. He further submitted that entire proceedings lapsed as Notification u/s 6 of the Act was issued after lapse of one year from the date of Notification issued u/s 4. Lastly it was contended that the Award was passed after 2 years from the date of Notification issued u/s 6 of the Act, thus, delay was fatal to the acquisition. Lastly, Shri Bagadiya, also urged that dead witnesses signed delivery of possession panchanama that shows that possession was not taken from the Appellants and they still continue to be in possession of plot in question.

4. Per contra, Shri Shekhar Bhargava, learned Senior Counsel appearing with Smt. R. Bhargava and Shri Pal, Advocates for Respondent Ujjain Development Authority, the main contestant in the case, and Shri Mukhoti, learned Government Advocate appearing for the State supported the impugned Order of the learned Single Judge and the Award passed by the Land Acquisition Officer and submitted that the none of the contentions raised on behalf of Appellants are borne out from the facts established on record and as such they being devoid of any substance merit rejection and no interference is warranted either with the Award or the impugned Order of the learned Single Judge.

5. We have perused the record and given our serious consideration to the rival submissions of the counsel appearing for respective parties in the context of factual background prevailing in the present case. After due consideration, in our opinion, there is no merit in this appeal so as to warrant interference with the order of the learned Single Judge.

6. Before taking up the submission advanced by the counsel appearing for the respective parties, it would be necessary to notice the ambit and scope of jurisdiction in Letters Patent appeal. In this connection, we may profitably refer to the decision of Supreme Court in the matter of (Baddula Lakshmaiah and Ors. v. Sri Anjaneya Swami Temple and Ors.) reported in 1996 MPLJ 1074 wherein it has been held as under :

A Letters patent appeal as permitted under the Letters Patent is normally an intra-Court appeal whereunder Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a Subordinate Court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error.

So understood, the appellate power under the Letters Patent is quite distinct, in contrast to what is ordinarily understood in procedural language.

(Emphasis supplied by us).

7. In the light of the law laid down by the Their Lordships of the Supreme Court, we have to examine, whether the learned Single Judge while dismissing the Writ Petition committed any error on facts or in law which requires correction by the Letters Patent Bench.

8. To appreciate the inter-linked contentions as urged by learned Counsel for the Appellants, it would be pertinent to point out that undisputedly the plot in question was part of larger plot (Survey No. 3393/1) admeasuring 1.515 hectare. Shashikant Agarwal and two other persons bought a portion thereof admeasuring 0.618 hectare somewhere in the year 1989-90 and the said piece of land was recorded in revenue records as Survey No. 3393/3. Later on, Shashikant and other co-owners sold it to the present Appellants through registered sale deed dated 20.11.2001. It is also undisputed that plot bearing Survey No. 3393/1 admeasuring 1.515 hectare was included in both the Notifications issued u/s 50(7) of the Adhiniyam and Section 4 of the Act (Ann. P-4 and P-5 published in M.P. Rajpatra dated 8.7.1988 and 15.3.1991 respectively). It is also clear from material brought on record that Appellants' predecessors in title pursuant to General Notice dated 12.6.1991 (Ann. P-6) issued by LAO Ujjain not only filed objection u/s 5A of the Act of 1894 before the Land Acquisition Officer, wherein no such objection as the Appellants are now staking, were raised but also actively perused and contested the earlier W.P. No. 1188 of 1991 filed by the Ujjain Development Authority challenging the Order dated 12.9.1991 of the Land Acquisition Officer, whereby the acquisition proceedings were dropped due to so called non-completion of development Scheme. The writ petition was allowed by the learned Single Judge vide order dated 18.1.2000 and it was directed that limitation for issuing Section 6 Notification would start from the date of the said order. Pursuant to the aforesaid order, Section 6 Notification was issued and published in the M.P. Rajpatra dated 18.2.2000. As a result of said notification, the LPA No. 55 of 2000 preferred by the Respondents in W.P. No. 1188 of 1991 including Appellants' predecessors in title, was dismissed on 26.4.2000 as having been rendered infructuous. After dismissal of the LPA, the Land Acquisition Officer heard and decided objections preferred by affected persons including the Appellants, and passed the Award on 15.2.2002. The only objection raised by the Appellants before the LAO was to the effect that their plot may be exempted from acquisition on the ground that said plot was purchased by them for construction of a nursing home. LAO rejected the objection holding that Appellants had no title over the plot in question as the sale deed in their favour was subsequent to the Notification issued u/s 6 of the Act. Pursuant to the Award, possession was taken on 1.5.2002. Thus, from the facts stated above, conclusion is inevitable that Plot bearing Survey No. 3393/3, which was carved out from plot bearing survey No. 3393/1 was all along subject matter of the acquisition proceedings and the Appellants cannot save the plot bearing survey No. 3393/3 from the clutches of acquisition proceedings. From the above discussions, it is clear that there is no force in the fragile submission of the learned Counsel that the acquisition of plot bearing Survey No. 3393/3 is bad on

the ground that the said plot was not included in the Notifications issued either u/s 50(7) of the Adhiniyam or Section 4 of the Act.

9. Appellants herein made an attempt to overcome the Award by filing the writ petition that was dismissed by the impugned order. Learned Single Judge placing reliance on the decisions of the Supreme Court reported in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd.*, and others, committed no illegality in holding that after passing of Award u/s 11, writ proceedings are not the proper proceedings to challenge the Award passed by the LAO. Learned Single Judge has rightly observed that the Appellants, who have stepped in the shoes of their predecessor in title, cannot claim for themselves a better or higher pedestal. Learned Single Judge also held that the Appellants had suppressed material facts and did not approach the Court with clean hands. They did not disclose in their Writ Petition that their predecessors in title had made Anr. attempt to install and over reach the Award by filing a Writ Petition W.P. No. 1580 of 2000. In the said writ petition an application was moved on behalf of the present Appellants on the strength of their title to intervene in the writ petition to support it but for the reasons best known to Appellants, they did not pursued the said application. The learned Single Judge by Order dated 1.4.2003 also dismissed the said writ petition. In view of the dismissal of the writ petition, claim of the Appellants is untenable in law.

10. Now coming to other contentions of the learned Counsel for the Appellants, it is clear from the above discussion that the learned Single Judge who heard and decided the W.P. No. 1188 of 1991 ordered that the limitation for Notification under 6 of the Act would start from the date of Order which was passed on 18.1.2000. Said order of the learned Single Judge was maintained in the L.P.A. No. 55 of 2000. Notification under 6 of the Act was issued on 1.2.2000 and the same was published in M.P. Rajpatra dated 18.2.2000. Land Acquisition Officer after hearing the objections passed the Award on 15.2.2002 within two years from the date of order of the learned Single Judge passed in W.P. No. 1188 of 1991. In view of this, in the opinion of this Court, no infirmity can be attributed to the Notification issued u/s 6 and the consequent Award of the Land Acquisition Officer. The reliance placed on the decision of the Supreme Court reported in AIR 1997 SC 2130 by the learned Counsel for the Appellants on the facts and in the circumstances of the present case is of no avail. Learned Counsel is also not right in his contention that dead persons signed the delivery of possession Panchanama. Panchanama is available on record of the writ petition as Annexure R-3/3. It does not bear either the thump impression or signatures of Late Smt. Sunderbai, whose death certificate has been filed subsequently on 4.12.2002.

11. In view of foregoing discussion, we find no force in any of the submissions of learned Counsel for the Appellants, as result, this LPA fails and is accordingly dismissed with no order as to cost.