(1980) 01 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 65 of 1976

The Urban Improvement Trust, Jaipur — APPELLANT

Vs

Padmanand and Others — RESPONDENT

Date of Decision : 25-01-1980

Acts Referred:

Constitution of India, 1950 — Article 12
Rajasthan Land Acquisition Act, 1953 — Section 18, 50
Rajasthan Urban Improvement Trust Act, 1959 — Section 1

Citation : AIR 1980 Raj 176 : (1980) RLW 289

Hon'ble Judges : M.L. Shrimal, J;Dwarka Prasad, J

Bench : Division Bench

Advocate : S.K. Tiwari, for the Appellant; G.C. Lunia, for the Respondent

Final Decision : Allowed

Judgement

Dwarka Prasad, J.—The controversy in this appeal is as to whether an Urban Improvement Trust, created under the Rajasthan Urban Improvement Act, 1959 thereinafter called ''the 1959 Act''), is competent to demand a reference u/s 18 of the Rajasthan Land Acquisition Act. "1953, in such matters where the acquisition is made at the behest of the Urban Improvement Trust.

2. The facts, which have given rise to this appeal, shortly put, are that land commonly known as ''Madhusudan Ka Bagh'' situated in village Bhojpura on Jaipur-Tonk Road, was acquired by the State Government for the planned development of the city of Jaipur. It is not in dispute that the acquisition proceedings were initiated by the Town Planning Department of the State Government for the purposes of and at the behest of the Urban Improvement Trust, Jaipur (hereinafter referred to as ''the Trust''). The Land Acquisition Officer, Jaipur passed an Award on March 25, 1969 for the sum of Rs. 84,430/- for the acquisition of the land in question. The Chairman of the Trust moved an application before the Land Acquisition Officer, u/s 18 of the Rajasthan Land Acquisition Act, 1953 (hereinafter referred to as ''the Act of 1953'') for making a

reference to the Civil Court for the determination of proper amount of compensation and of the persons who were legally entitled to such compensation. A reference was made by the Land Acquisition Officer to the Court of the Civil Judge, Jaipur City. A preliminary objection was raised on behalf of the respondents before the Court that the reference was not maintainable, as the Trust was not entitled to demand a reference u/s 18 of the Act of 1953. The Civil Judge, by his order dated Jan. 16, 1975 accepted the preliminary objection and held that the Trust was not entitled to demand a reference and rejected the reference on the ground that it was not maintainable. Hence, this appeal was filed in this Court.

3. Section 18 of the Act of 1953 as amended, which is relevant for the purpose of determination of the question which has been raised before us, reads as under :--

"18. Reference to Court: -- (1) The State Government department on whose behalf or the company for which acquisition is being made or any person interested who has not accepted the award or the amendment thereof 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 amount of costs allowed, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award or the amendment thereof is taken :

Provided that every such application shall be made --

(a) if the person making it was present or represented before the Collector at the time when he made his award or the amendment thereof, within six weeks from the date of the Collector''s award or the amendment thereof, and

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2) or within six months from the date of the Collector''s award or the amendment thereof whichever period shall first expire."

4. According to the provisions of Section 18, the ''State Government department'', on whose behalf or the company for which acquisition has been made, is entitled to require the Collector to make a reference to the Court, besides any person interested who has not accepted the award. It was held by the learned Civil Judge that the trust evidently did not fall in any of the above three categories. It was neither a State Government department nor it was a company nor it could be placed in the category of ''any person interested'' in the matter of receiving compensation. Dr. Tiwari, appearing for the Trust, argued that the Urban Improvement Trust fell within the category of "State Government department", on whose behalf the acquisition was being made and as such the Trust was entitled to require the Collector to make a reference to the Court. Mr. Lunia, appearing for the respondents, however, contested this submission and

argued that the Trust cannot be considered to be a department of the State Government, but it is an autonomous body created under the 1959 Act. He also placed reliance upon the decision of the learned single Judge of this Court in the case of the The Urban Improvement Trust, Udaipur Vs. Smt. Prem Devi and Another, wherein it was held that the Urban Improvement Trust was not competent to require the Collector to make a reference to the Court u/s 18 of the Act of 1953. We may, however, observe that the only argument advanced before Hon''ble Sen, J., as he then was, in the aforesaid case, was that the Urban Improvement Trust was ''any person interested'', within the meaning of Section 18 of the Act of 1953, and the submission which has been made by Dr. Tiwari before us that the Trust was a State Government department, was neither, raised nor decided in Smt. Prem Devi''s case.

5. The modern concept of a Corporation as the third arm of the State has given birth to a new instrumentality or agency of Government for carrying on the complex functions of urban development. The functions and activities which were earlier carried on by a department of the State Government were transferred to a new instrumentality or agency.

6. In Ram Chandra Vs. The District Magistrate of Aligarh and Others, a Bench of the Allahabad High Court considered the question as to what, is meant by a department of the Government and held that a department is a particular activity or a branch of Government under the political charge or control of a Minister or a Minister of State responsible to the legislature. In Encyclopaedia Britannica, (14th Edn.) Vol. 7 at p. 228, the word ''department'' is defined to mean ''a division or part of a system; one of the branches of the administration in a State or Municipality.

7. In Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, Shelat, J. speaking for the Supreme Court observed that the question whether a Corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a Corporation so provides, such a Corporation can easily be identified as an agent of the State. In Graham v. Public Works Commr. (1901) 2 KB 781. Phillimore, J. said that the Crown in certain cases establish with the consent of Parliament certain officials or bodies, who are to be treated as agents of the Crown, even though they have the power of contracting as principals. An inference that the Corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions.

8. In Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, Mathew. J., speaking for their Lordships of the Supreme Court, observed as under :--

"there seems to be no formula which would provide the correct division of cases of this type into neat categories of State action and private action. Some clue, however, to the considerations which might impel the Court in one direction or the other may be obtained from an examination of the cases in this area. The decisions of the State Courts in U. S. A, seem to establish that a private agency, if supported by public money for its operation would be ''State'', But in all these cases, it has been found that there was an element of control exercised by the State. Therefore, it may be stated generally that State financial aid alone does not render the institution receiving such aid a State agency. Financial aid plus some additional factor might lead to a different conclusion..........."

"Another factor which might be considered is whether the operation is an important public function. The combination of state aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant, in making a finding of State action." In Sukhdev Singh''s case the Supreme Court further observed :

"The ultimate question which is relevant for our purpose is whether such a Corporation is an agency or instrumentality of the Government for carrying on a business for the benefit of the public. In other words, the question is for whose benefit was the Corporation carrying on the business ? When it is seen from the provisions of that Act that on liquidation of the Corporation, its assets should be divided amongst the shareholders, namely, the Central and State Governments and others, if any, the implication is clear that the benefit of the accumulated income would go to the Central and State Governments. Nobody will deny that an agent has a legal personality different from that of the principal. The fact that the agent is subject to the direction of the principal does not mean that he has no legal personality of his own. Likewise, merely because a Corporation has legal personality of its own, it does not follow that the Corporation cannot be an agent or instrumentality of the State, if it is subject to control of Government in all important matters of policy .... The crux of the matter is that public Corporation is a new type of institution which has sprung from the new social and economic functions of Government and that it therefore does not neatly fit into old legal categories. Instead of forcing it into them, the latter should be adopted to the needs of changing times and conditions."

9. In State of Karnataka Vs. Union of India (UOI) and Another, Beg, C. J., speaking for the Supreme Court, observed as under :--

"Even in countries with undiluted unitary systems of Govt. there is devolution of powers of local self-Government for restricted purposes. In our country, there is, at the top, a Central or the Union Government responsible to Parliament, and there are, below it, State Governments, responsible to the State Legislatures, each functioning within the sphere of its own powers which are divided into two categories; the exclusive and the concurrent. Within the exclusive sphere of the powers of the State Legislature is local Government. And, in all States there is a system of local Government in both Urban and Rural areas, functioning under State enactments. Thus, we can speak of a three tier system of Government in our country in which the Central or the Union Government comes at the apex with certain subjects which are exclusively left to the State concerned ordinarily or in normal times."

10. The question regarding the modern concept of Corporations again came up before their Lordships of the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, The question which squarely fell to be decided in that case was as to whether the International Airport Authority of India was a governmental agency or not. The matter was exhaustively considered by Bhagwati, J. who delivered an illuminating judgment and in the course in which his Lordship observed :--

"Now, it is obvious that the Government which represents the executive authority of the State, may through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. In the early days, when the Govt. had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions, which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State. It began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often of specialised and highly technical character. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the public corporation came into being as the third arm of the Government."

It is, thus, apparent that a corporation may be created in one of the two ways, it may either be established by a statute or may be incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a Corporation is wholly controlled by the Government, not only in its policy making but also in carrying out its functions, then there can be no doubt that such a corporation would be an instrumentality or agency of the Government. If the funds are provided by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government, Although, it is not possible to formulate an all-inclusive or exhaustive test to determine whether a Corporation established by a statute or incorporated under law is an agency or instrumentality of the Government, yet the matter can be decided by considering the provisions of the statute creating the Corporation. If financial assistance of the State is so much as to meet almost entire expenses of the Corporation, then it would afford some indication that the Corporation is a governmental agency. But financial assistance by itself would not be enough to classify the Corporation as a State agency. However, if there is financial assistance by the Government along with unusual degree of control over the management and the policies and activities of the Corporation, the same would lead to the conclusion that such a corporation is an instrumentality or agency of the Government.

11. In order to decide the question as to whether the Urban Improvement Trust, created under the 1959 Act, is such an instrumentality or agency of the State so that it can be said to fall within the category of ''State Government Department'', specified in Section 18 of the Act of 1953, it would be necessary to consider the broad features of the Act of 1959. The Rajasthan Urban Improvement Trust Act, 1959 was promulgated with the object of improvement and expansion of urban areas in the State of Rajasthan, as has been specified in the preamble of the Act. Section 8 provides that the State Government shall establish a Board of Trustees, to be called the Improvement Trust of the place, for the purpose of carrying out improvement of any urban area in the State. Section 24 of the 1959 Act provides that the State Government shall give general or special directions, subject to which the Trust may propose the strength of officers and servants to be appointed and such proposals may be sanctioned by the State Government with or without amendment. It has further been provided that no appointment shall be made otherwise than in accordance with the sanction of the State Government. Then, u/s 28, the Chairman of the Trust is bound to furnish such information and documents to the State Government as it may require. Moreover, copies of the minutes of the proceedings of each meeting of the Trust will have to be forwarded by the Chairman of the Trust to the State Government within ten days from the date on which the minutes of the proceedings of such meeting are signed.

12. u/s 3 the State Government is authorised to get the urban area surveyed and get a master plan prepared by such officer or authority as it may appoint. The Trust may prepare schemes u/s 29 of the 1959 Act, on the order of the State Government or on its own initiative or on the representation made to it by the local Municipal Board. But such a scheme made for or in respect of an urban area has to conform to the master plan of the city or town, which has been prepared and approved. u/s 37, the State Government has the power to sanction, reject or return the scheme prepared by the Trust for reconsideration. In case the State Government sanctions an improvement scheme prepared by the Trust, then such fact shall be published by a notification issued by the State Government. Section 43 of the 1959 Act authorises the State Government to place at the disposal of the Trust all or any improved and unimproved lands in the urban area, for which the Trust has been constituted by means of a notification published in the official gazette. In exercise of the powers conferred by Section 43 (1) of the 1959 Act, the State Government issued a notification on July 17, 1961 placing at the disposal of the Improvement Trust, Jaipur all nazul lands lying within the municipal area except those lying within the city walls of Jaipur, subject to the terms and conditions specified in the aforesaid notification. The notification

provides that the proposals made by the Trust shall be examined by a committee constituted by the State Government for the purpose and the committee will have the power to sanction the proposals made by the Trust, with or without modification or to return such proposals to the Trust for reconsideration. The notification also provides that all nazul lands which have been placed at the disposal of the Improvement Trust, shall be disposed of by the Trust concerned, "for and on behalf of the State Government". Detailed provisions have been made in the notification regarding the manner in which the nazul lands placed at the disposal of the Trust shall be sold, including the procedure of public auction or allotment by the Trust. Para (11) of the aforesaid notification provides that in respect of every sale or allotment of land made by the Trust, a document shall be prepared in the prescribed form which shall be signed by the Chairman of the Trust "for and on behalf of the Governor of the State."

13. These provisions go to show that the Trust has been created as a body to discharge the functions of disposing of the nazul lands placed at its disposal and in doing so the Trust is required to act as an agency of the State Government. It may also be pointed out that earlier to the creation of the Trust, such functions were discharged by a department of the State Government. Section 47 of the 1959 Act vests the Improvement Trust with all the powers and functions, which might be exercised and performed by the municipal board, council or corporation in the urban area for which the Trust is established. Section 51 authorises the Trust to acquire land by agreement, while Section 52 provides for compulsory acquisition of land for the purposes of the Trust. Section 60 authorises the Trust to dispose of any land acquired by the State Government and transferred to the Trust, with the sanction of the State Government and subject to such directions as may be given by the State Government in that respect. Section 66 provides that all moneys of the Trust shall be kept in the government treasury or sub-treasury or a bank to which the government treasury business has been made over, and it also provides that the Trust fund shall be applied only towards meeting the expenses incurred by the Trust, in the carrying out of schemes framed and sanctioned under the 1959 Act and in the administration of the other provisions of the said Act and for no other purpose.

14. Section 73-B vests the authority in the State Government to allow, in public interest, any person to use the land sold or allotted to him for purposes different from that for which it was originally allotted or sold to him, on payment of conversion charges, as may be prescribed. It is also provided that the conversion charges so realised may be credited to the consolidated fund of the State or to the Fund of the Trust, as may be determined by the State Government. Under the provisions of Section 73-B of the 1959 Act, read with Section 74 thereof, the State Government has made the Rajasthan Urban Improvement (Change of Use of Residential Land or Premises for Commercial Purposes) Rules, 1974. Under these Rules if a person, to whom land is sold or allotted, desires to use the same for different purpose, he may make an application to the Collector or other authorised officer who may send such application to the Trust for advice and

after receiving the recommendation of the Trust, the Collector or other authorised officer may submit his report to the State Government and it is ultimately for the State Government, which under Rule 5 is empowered to allow the change of residential land for commercial purpose or otherwise, to sanction such change on payment of conversion charges. The State Government has also framed a set of Rules which are called the Rajasthan Improvement Trust (Coordination between the Municipalities and the Improvement Trust with regard to Construction of Buildings) Rules, 1964 which provide that any plan of building proposed to be erected or re-erected, altered or added should be subject to scrutiny by the Trust, but it shall be sanctioned by the Municipal Board or Municipal Council concerned and the fees in respect thereof shall also be charged by the Municipal Board or the Council. Thus, the Trust is only a recommendatory body and its duty is to see that the development of the area is in conformity with the schemes in force and does not run counter to the master plan of the area.

15. All these provisions make it, amply clear that the functions, which the Improvement Trust is required to discharge, are public functions and a duty has been cast upon the Trust to see that the development of urban area is properly regulated and is in conformity with the master plan approved by the State Government. It is also apparent from a perusal of the aforesaid provisions that the State Government keeps strict control on every activity of the Trust. Even the transfers of land made by the Trust are to be made as if the Trust is acting as an agent of the State Government. The document evidencing such transfer of land has to be executed by the Chairman of the Trust ''for and on behalf of the Governor of the State''. In our view, a close scrutiny of the provisions of the 1959 Act leave no doubt that the Improvement Trust, created under the aforesaid Act, works as an agent or instrumentality of the State Government and as such the Trust must be considered as a ''State Government department'', for the purposes of Section 18 of the Act of 1953.

16. It would also be pertinent to notice here that the proviso to Section 50 of the Act of 1953, which prohibited a local body and a company at whose instance and for whose benefit acquisition of land was made, from applying for making a reference was deleted by the Amending Act No. 22 of 1966 and by the same Amending Act Section 18 of the Act of 1953 was also amended so as to enable a company, for which acquisition was being made, to demand a reference. This fact also goes to show that the local body or an Improvement Trust on whose behest the State Government proceeds to acquire land is included in the expression "State Government department" occurring in Section 18 of the Act of 1953. It cannot be visualized that the legislature at all intended to place the Improvement Trust or a local body at a disadvantage in the matter of seeking a reference u/s 18, even as compared with a Company. The amendments introduced in Sections 18 and 50 simultaneously by the same Amending Act of 1966 strongly support the interpretation which we are inclined to take of the expression "State Government department" in Section 18 of the Act of 1953.

17. We have, from a consideration of the various provisions of the Act of 1959, come to the conclusion that there is an all pervading control of the State Government in the affairs of the Trust. Not only the funds of the Trust are provided partly by the State Government, the money of the Trust has to be kept in the Government treasury or sub-treasury or the bank to which Government treasury business has been made over. Further the State Government exercises effective control in respect of the strength and service of the Trust. The nazul lands have been placed at the disposal of the Trust for improvement, control and supervision, but, however, if any nazul land is to be disposed of by the Trust in accordance with the terms and conditions of the notification dated July 17. 1961, then the Trust has to act "for and on behalf of the State Government" in respect of disposal of such nazul land. All these factors go to show that not only there is financial assistance but existence of extraordinary governmental control over the activities and functioning of the Trust. It cannot also be denied that the Trust has been created for performing public functions. It is a matter of common knowledge that the functions which are performed by the Improvement Trust were formerly performed by a department of State Government and when a department of the State Government is transferred to a corporation, it is a strong factor supporting the inference that such a corporation is an instrumentality or agency of the State. The duty to maintain public streets, street lighting, a sewage system are all such activities which must be termed as public functions. By vitrue of the nature of the functions performed by the Trust, along with the factors of Government control and financial assistance, we have no doubt that the Trust is a State Government department within the meaning of Section 18 of the Act of 1959.

18. We, therefore, hold that the Urban Improvement Trust, Jaipur was entitled to apply u/s 18 of the Act of 1953 for making a reference to a court.

19. The appeal is accordingly allowed and the order passed by the learned Civil Judge dated January 16, 1975 is set aside and the case is remanded to the Civil Judge, Jaipur City for decision of the reference made u/s 18 of the Land Acquisition Act, 1953 on merits. In the circumstances of the case, the parties are left to bear their own costs.

