RAGHUNATH & ORS.

v.

STATE OF MAHARASHTRA & ORS.

APRIL 7, 1988

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

Land Acquisition Act, 1894: Sections 4 and 6—Valid declaration under section 6—Scope of Notification under section 4 gets exhausted—Not so when declaration under section 6 is invalid, ineffective or infructuous—No distinction between declaration held invalid by court and declaration withdrawn by government when some illegality is pointed out.

The appellants' lands were among those sought to be acquired under the Land Acquisition Act, 1894 by means of a notification under section 4, followed by a declaration under section 6. The Notification and the declaration were challenged by way of a Writ Petition on the short ground that the appellants had not been heard before making the declaration. When the Writ Petition was heard, a statement on behalf of the Government was made, to the effect that the notification under section 6 was being withdrawn. On the basis of this statement the Writ Petition was disposed of as withdrawn. Thereafter the appellants were heard under section 5A and a fresh declaration under section 6 was issued. The appellants filed a Writ Petition and again challenged the Notification under section 4 as vitiated by *mala fides* and non-application of mind. The High Court rejected the same. Another question raised before the High Court was that the withdrawal of the earlier declaration had the automatic effect of rendering the Notification under section 4 ineffective and infructuous. The High Court rejected that contention as well. Hence this appeal by special leave.

Dismissing the appeal, this Court,

HELD: 1. Once there is a valid declaration under section 6, the scope of the notification under section 4 will get exhausted. This principle cannot clearly apply to a case where the declaration under section 6 proves to be invalid, ineffective or infructuous for some reason. There is no distinction between a case where a declaration under section 6 is declared invalid by the Court and a case in which the Government itself withdraws the declaration under section 6 when some obvious illegality is pointed out. [444E, 445B]

A *Girdhari Lal Amrit Lal* v. *State*, [1966] 3 SCR 437; *State* v. *Haider Bux*, [1976] 3 SCC 536 and *State* v. *Bhogilal Keshavlal*, [1980] 2 SCR 284 followed.

State v. *Vishnu Prasad Sharma*, [1966] 3 SCR 557 distinguished.

B *Ajit Singh* v. *State*, AIR 1972 Bombay 177 disapproved.

2. Between the date of withdrawal of the earlier Writ Petition and the issue of the second declaration under section 6, the Government had issued a fresh Notification under section 4 for the acquisition of certain lands. The lands in the two Notifications under section 4 do not completely overlap, but some fields are common in both. No declaration under section 6 had been issued in furtherance of the second notification under section 4 when the High Court heard the matter. In respect of the lands covered by the first notification under section 4 which are also covered by or comprised in the second notification under section 4, further proceedings regarding acquisition shall be taken in accordance with law only in pursuance of the latter notification and the proceedings initiated by the first notification should be deemed to have been superseded. [445C-F]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1274 of 1988.

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From the Judgment and Order dated 7.10.1986 of the Bombay High Court in W.P. No. 1143 of 1985.

Masodkar and A.K. Gupta for the Appellant.

F V.S. Desai and A.S. Bhasme for the Respondents.

The Judgment of the Court was delivered by

RANGANATHAN, J. 1. We grant special leave and proceed to dispose of the appeal after hearing both counsel.

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2. The point raised in the appeal is a very short one. The lands, belonging to the petitioners were among those sought to be acquired under the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') by means of a notification under Section 4 issued on 22nd June, 1982. This was followed up by a declaration under Section 6 dated 15th H March, 1983. The petitioners challenged both the notification and the

declaration in writ petition No. 947 of 1983 before the High Court. The notification under Section 4 was challenged on the ground of *mala fides* and the declaration under Section 6 on the short ground that the petitioners' objections had not been heard before the making of the declaration. When this writ petition came up for hearing, a statement was made on behalf of the Government that the notification under Section 6 was being withdrawn. On this statement being made, the writ petition was withdrawn and disposed of accordingly. Thereafter the petitioners were heard under Section 5 A of the Act and a fresh declaration under Section 6 was issued on 4th April, 1985.

3. The petitioners again filed a writ petition in the High Court, being writ petition no. 1143 of 1985, the judgment in which forms the subject matter of the present appeal. In this writ petition they again challenged the notification under Section 4 as vitiated by *mala fides* and non-application of mind. The High Court has found no merit in this contention and rejected the same. We see no reason to interfere with this conclusion of the High Court.

4. However, another question was also raised by the petitioners, namely, that the withdrawal of the earlier declaration dated 15.3.1983 had the automatic effect of also rendering the notification under Section 4 dated 22.6.1982 ineffective and infructuous. On the strength of the decision of this Court in *State* v. *Vishnu Prasad Sharma*, [1966] 3 SCR 557, it was contended that, once a declaration under section 6 was issued, the notification under Section 4 exhausted itself. It made no difference, it was said, that the notification issued under S. 6 had been withdrawn. Reliance was also placed on the decision of the Bombay High Court in *Ajit Singh* v. *State*, AIR 1972 Bombay 177 in support of this proposition. This contention, however, was rejected by the High Court and hence the present appeal.

5. We are of opinion that the decision of the High Court is correct and should be upheld. The Bench has rightly pointed out that *Ajit Singh's case* (supra) had failed to take note of the decisions of this Court in *Girdhari Lal Amrit Lal* v. *State*, [1966] 3 SCR 437: *State* v. *Haider Bux*, [1976] 3 SCC 536 and *State* v. *Bhogilal Keshavlal*, [1980] 2 SCR 284 and therefore, does not represent the correct law.

6. In *Vishnu Prasad Sharma's* case (supra) the question for consideration of this Court was whether there could be successive declarations in respect of various parcels of land covered by a notification under Section 4(1). Considering the scheme of the Act as it then stood,

the Court held that the Act envisaged a single declaration under Section 6 in respect of a notification under Section 4 and that, when once a declaration under Section 6 particularising the area in the locality specified in the notification under Section 4(1) is issued, the remaining non-particularised area stands automatically released. The Court also referred to the provisions of Section 48 of the Act in this context. The following observations appear in the judgment of Sarkar J.

> "..... It seems to me that if the correct interpretation is that only one declaration can be made under S. 6, that also would exhaust the notification under S. 4; that notification would no longer remain in force to justify successive declarations under S. 6 in respect of different areas included in it. There is nothing in the Act to support the view that it is only a withdrawal under S. 48 that puts a notification under S. 4 completely out of the way. The effect of s. 48 is to withdraw the acquisition proceedings, including the notification under s. 4 with which it started. We are concerned not with a withdrawal but with the force of a notification under S. 4 having become exhausted."

7. The High Court was correct in pointing out that the above observations were made in the context of a valid declaration under S. 6. The Court held that once there is a valid declaration under S. 6, the scope of the notification under S. 4 will get exhausted. This principle cannot clearly apply to a case where the declaration under S. 6 proves to be invalid, ineffective or infructuous for some reason. It has been so held by this Court in a number of decisions. In *Girdhari Lal Amrit Lal's case* (supra) which was decided about a week earlier to *Vishnu Prasad Sharma's case*, this Court held that, where a notification under S. 6 is invalid, the Government may treat it as ineffective and issue in its place a fresh notification under S. 6 and that there is nothing in S. 48 of the Act to preclude the Government from doing so. This view has been repeated in *State* v. *Haider Bux*, [1976] 3 SCC 536 and *State* v. *Bhogilal Keshavlal*, [1980] 2 SCR 284. These decisions have clearly pointed out the distinction between a case where there is an effective declaration under S. 6 (which precludes the issue of further declarations in respect of other parts of the land covered by the notification under S. 4 not covered by the declaration issued under S. 6) and a case where, for some reason, the declaration under S. 6 is invalid.

8. It is true that in the present case there was no occasion for the High Court in the earlier writ petition to pronounce the declaration

dated 15.3.1983 to be invalid. But the validity of the declaration had been challenged on the ground that the petitioners had not been heard under S. 5A, an irregularity, which *ex facie* rendered the declaration invalid. The State Government obviously acknowledged this and withdrew the declaration on its own instead of obtaining a judgment to that effect from the Court. In principle, there is no distinction between a case where a declaration under S. 6 is declared invalid by the Court and a case in which the Government itself withdraws the declaration under S. 6 when some obvious illegality is pointed out. The point in issue in this appeal is thus directly governed by the three earlier decisions of this Court and the High Court was fully justified in dismissing the writ petition on this ground.

9. 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 under S. 6 (namely, 4.4.1985), the Government had issued a fresh notification under S. 4 for the acquisition of certain lands. The lands in the two notifications under S. 4 do not completely overlap but it appears that some fields are common in both. No declaration under S. 6 appears to have been issued in furtherance of the second notification under S. 4 when the High Court heard the matter. Learned counsel for the petitioners points out that, atleast in respect of such of the lands comprised in the S. 4 notification dated 22.6.1982 as are also covered by the subsequent notification under 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 under S. 4 which are also covered by or comprised in, the second notification under 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 22.6.1982 should be deemed to have been superseded.

10. With the above clarification, we affirm the order of the High Court had dismiss this appeal. In the circumstances, however, we make no order as to costs.

G.N. Appeal dismissed.