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YADU NANDAN GARG

v.

STATE OF RAJASTHAN AND ORS.

NOVEMBER 1, 1995

B

[K. RAMASWAMY AND B.N. KIRPAL, JJ.]

Rajasthan Land Acquisition Act, 1953 :

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Sections 4(1)6, 9, 16—Preliminary notification issued—Declaration issued subsequently after the improvement scheme has been finalised—Exemption given to a nursery but not to the person who had purchased the land after the notification and living there after constructing a residential house—Survey number—Mentioning of sub-division of the main survey number in the notice—Held in all such cases, notification does not get vitiated.

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For the 'planned development of Jaipur City' a preliminary notification under S.4(1) of the Rajasthan Land Acquisition Act, 1953 was published on October 17, 1963 acquiring certain lands. The declaration under S.6 was published on January 7, 1991 after the improvement scheme was finalised. In the meanwhile appellant had purchased some of the said lands, under a registered sales deed dated July 15, 1970. Therefore, notice was issued under S.9 Appellant filed an application for exemption which was turned down. He also filed an objection to the notice under S.9 regarding Survey No. 265/1. As the exemption application was rejected, he filed a writ petition in the High Court, which was dismissed by a Single Judge. The Division Bench confirmed the same. Hence this appeal.

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The appellant contended that in view of the unexplained inordinate delay between the preliminary notification under S.4(1) and the declaration under S.6, the notification has to be quashed; that while a nursery adjacent to the appellant's site was given exemption from the acquisition, the appellant's site on which he had constructed a residential house and living therein was not exempted; and that the survey no, initially mentioned was 265, whereas in the notice under S.9 it was mentioned as 265/1 and therefore, the acquisition proceedings were invalid in law as it was not covered by S.4(1) notification.

Dismissing the appeal, this Court

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HELD : 1. It is seen that long after the notification under Section 4(1) of the Land Acquisition Act was published in the Gazette, the appellant had purchased the property and constructed the house thereon. Therefore, as against the State his purchase was not lawful and it could not be used against the State to clothe it with a colour of title as against the State. It is an encumbrance against the State and when the acquisition was finalised and the possession is taken, the State under Section 16 is entitled to have the possession with absolute title free from all encumbrances. The appellant cannot get any title much less valid title to the property. [713-C-D]

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2. The appellant himself had purchased the property in 1970 long after the acquisition and therefore, he cannot take the ground of unexplained delay between the date of issuance of notification under section 4(1) and the declaration under Section 6. It is seen that after the publication of the notification under Section 4(1) the improvement scheme was prepared and sent to the Government for finalisation thereof. It has taken, as usual, certain time for approval and after the declaration under Section 6 was duly published in the Gazette. Under these circumstances, it cannot be said that there was any inordinate delay in the issuance of declaration under Section 6 and the valid notification under Section 4 does not become invalid on that account due to inaction on the part of the subordinates. [713-E-F]

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3. It is true, for reasons best known to the authorities, that Anand Nursery had the benefit of the exemption. The wrong exemption under wrong action taken by the authorities will not confer on others the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination. So also the wrong mention of Survey number in notice under Section 9 cannot cast cloud on valid notification issued under Section 4(1) of the Act. It is enough that main survey number is mentioned in the notification under Section 4 and the details thereof would be supplemented at the appropriate stage. Mention of the sub-division of the main survey number does not vitiate the notification under Section 4(1). [713-G-H, 714-B]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5315 of 1983.

From the Judgment and Order dated 16.7.80 of the Rajasthan High Court in D.B.C.S.A. No. 194 of 1980.

B P.H. Parekh, Krishan Mahajan and Arvind Kr. Sharma for the Appellant.

Aruneshwar Gupta and Manoj Kumar for the Respondents.

C The following Order of the Court was delivered :

The preliminary Notification under Section 4 (1) of the Rajasthan Land Acquisition Act, 1953 (for short, 'the Act') was published in the Gazette on October 17, 1963 acquiring 99 Biswas & 17 Bighas of land in Rampura Roopa and Gopalpur villages for 'planned development of Jaipur city'. It comprises of Survey No. 265 admeasuring 12 Bighas of the land in Rampura Roopa village. The declaration under Section 6 was published on January 7, 1991 after the improvement scheme had been finalised under the Rajasthan Urban Improvement Trust Act, 1969. In the meanwhile, the appellants had purchased 453 sq. yards, viz., 3 biswas of the land under a registered sale deed dated 15th July, 1970. Therefore, the notice was issued under Section 9 of the Act on April 12, 1971. The appellants filed an application for exemption on July 15, 1991 which was turned down. He also filed an objection to the notice under Section 9 regarding Survey No. 265/1. Since exemption was rejected on May 17, 1972 he filed a writ petition in the High Court. The learned Single Judge by his order dated November 15, 1979 dismissed the writ petition and the same was confirmed by the Division Bench of the High Court on July 16, 1980 in D.B. Civil Special Appeal No. 194 of 1980. Thus this appeal by special leave.

G Sri P.H. Parekh, learned counsel appearing for the appellants, raised three-fold contention, viz., that there is an unexplained inordinate delay between publication of the preliminary notification under Section 4(1) and the declaration under Section 6 vitiating the validity of the notification under Section 4 (1). So it needs to be quashed on that premise. He further contended that Anand Nursery which is adjacent to the appellants's site was given exemption from the acquisition whereas the appellants's site used for

residential purpose has not been exempted. The appellant had constructed the house and is living therein and thus this invidious discrimination offends Article 14 of the Constitution. Lastly, he contended that survey number initially mentioned was '265' whereas in the notice under Section 9 it was mentioned as '265/1' and that, therefore, the acquisition proceedings are invalid in law as it was not covered by 4(1) notification.

We do not find any substance in any of these contentions. It is seen that long after the notification under Section 4 (1) was published in the Gazette, the appellant had purchased the property and constructed the house thereon. Therefore, as against the State his purchase was not lawful and it could not be used against the State to cloth it with a colour of title as against the State. It is in encumbrance against the State and when the acquisition was finalised and the possession is taken, the State under Section 16 is entitled to have the possession with absolute title free from all encumbrances. The appellant cannot get any title much less valid title to the property.

Sri Parekh contended that the unexplained delay in issuing declaration under Section 6 is fatal to the acquisition. That contention is no longer available to the appellant. He himself had purchased the property in 1970 long after the acquisition and, therefore, he cannot take the ground of unexplained delay between the date of issuance of notification under Section 4(1) and the declaration under Section 6. It is seen that after the publication of the notification under Section 4(1) the improvement scheme was prepared and sent to the Government for finalisation thereof. It has taken, as usual, certain time for approval and after the declaration under Section 6 was duly published in the Gazette. Under these circumstances, we do not find any inordinate delay in the issuance of declaration under Section 6 and the valid notification under Section 4 does not become invalid on that account due to inaction on the part of the subordinates.

It is true, for reasons best known to the authorities, that Anand Nursery had the benefit of the exemption. The wrong exemption under wrong action taken by the authorities will not cloth others to get the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination. The wrong mention of Survey number in notice under Section 9 cannot cast cloud on valid notification issued under

A Section 4(1) of the Act. It is enough that main survey number is mentioned in the notification under Section 4 and the details thereof would be supplemented at the appropriate stage. Mention of the sub-division of the main survey number does not render the notification under Section 4(1) illegal.

B The appeal is accordingly dismissed but without any order as to costs.

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Appeal dismissed.