

THE STATE OF MAHARASHTRA AND ANR.

A

v.

UMASHANKAR RAJABHAU AND ORS.

NOVEMBER 9, 1995

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

B

Land Acquisition Act, 1894: Sections 4(1), 6, 9 and 48(1).

Land Acquisition—Notification—Declaration—Award—Purchase of land before publication of notification—No mutation in favour of purchaser—Consequentially notices not issued to purchaser—Sale of land by purchaser—Setting aside of acquisition proceedings for non issue of notice—Held not valid.

C

Land Acquisition—Withdrawal of acquisition—No Notification under Section 48(1)—Held Court cannot take notice of subsequent disinclination on the part of beneficiary.

D

For acquisition of 5 acres of land a notification under section 4(1) of the Land Acquisition Act, 1894 was published on September 17, 1970; a declaration under section 6 was published on July 29, 1971 and the award was made on September 15, 1971. Before the publication of the notification under section 4(1) i.e. on June 17, 1968 respondents 1-3 had purchased three plots from the original owner-Usmanshahi Mill. However, no mutation was effected in their names and therefore notices were not issued to them. Respondents 1-3 sold these plots to respondent No. 4. The High Court quashed acquisition in respect of three plots of respondents 1-3 on the ground that notices required under law have not been issued to them. Against the decision of the High Court State preferred appeal before this Court.

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Allowing the appeal, this Court

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HELD : 1. Section 4(1) of the Land Acquisition Act, 1894 does not require the service of the personal notice nor the one under section 6 declaration. What is needed to be served in the locality and the Gazette have been complied with. Since mutation had not been effected in the name of respondents 1-3 though land was purchased prior to the publication of

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A notification under section 4(1), they could not be issued notices as required under section 9. Notice to the 4th respondent is obviously impossible, since the award had already been made on September 15, 1971. His purchase thereafter is obviously illegal as it does not bind the State after the notification under section 4(1) was published. Therefore, the High Court was wholly unjustified in quashing acquisition in respect of three plots of land of respondents 1-3. [41-A-C]

2. So long as there is no notification published under section 48(1) of the Act withdrawing from the acquisition, the Court cannot take notice of any subsequent disinclination on the part of the beneficiary. [41-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1430 of 1984.

From the Judgment and Order dated 18.7.79 of the Bombay High Court in S.C.A. No. 92 of 1975.

S.M. Jadhav for the Appellants.

V.B. Joshi for the Respondents.

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment and order dated July 18, 1979, made in Special Civil Application No. 92/75 by the High Court of Bombay. Notification under section 4(1) acquiring an extent of about 5 acres of land was published in the State Gazette on September 17, 1970 for public purpose, namely construction of staff quarters for Maharashtra Road Transport Corporation employees. Declaration under section 6 was published on July 29, 1971. The award also was made on September 15, 1971. It would appear that respondents 1-3 had purchased three plots of land from Usmanshahi Mills which was under liquidation through the Official Liquidator on June 17, 1968. But the mutation of their names in the revenue records was not effected. In consequence, notices could not be issued. They, in turn, sold these plots to 4th respondent in 1973. A writ petition was filed on December 19, 1974 challenging the validity of the notification and also the award. The High Court set aside the notification on the ground that notices as required under law have not been served on respondents 1-3.

It is seen that section 4(1) does not require the service of the personal notice nor the one under section 6 declaration. What is needed to be served in the locality and the Gazette which have been complied with. As regards the notices under section 9 is concerned, it now transpires from the revenue records that the original owner namely Usmanshahi Mill was served. Since mutation had not been effected in the name of respondents 1-3 though purchased prior to the publication of notification under section 4(1), they could not be issued notices as required under Section 9. Notice to the 4th respondent is obviously impossible, since the award has already been made on September 15, 1971. His purchase thereafter is obviously illegal as it does not bind the State after the notification under section 4(1) was published. Under these circumstances, the High Court was wholly unjustified in quashing acquisition in respect of three plots of land of respondents 1-3.

It is brought to our notice that after the notification was quashed by the High Court, no further steps were taken by the government. It is not necessary since it is being challenged in the appeal in respect of these three plots. A submission was made that the Corporation does not need these three plots of lands for the employees. So long as there is no notification published under section 48(1) of the Act withdrawing from the acquisition, the Court cannot take notice of any subsequent disinclination on the part of the beneficiary.

The appeal is allowed and the writ petition stands dismissed. But, in the circumstances, without costs.

T.N.A.

Appeal allowed.