

NEW REVIERA CO-OP. HOUSING SOCIETY

v.

SPÉCIAL LAND ACQUISITION OFFICER

DECEMBER 4, 1995

[K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.]

Land Acquisition Act, 1894—Sections 4, 8, 11-A, 16, 18, 23 [1], 31 [3].

Acquisition—Award made—Compensation paid—Reference proceedings pending for determination of adequate compensation—Directions sought for not to eject till proceedings become final—Held, once the award has been made and compensation has been paid the LAO is entitled to take possession and the possession thereby stands vested in the State free from all encumbrances—State not obliged to provide alternative site—No directions can be issued not to eject the appellants till the reference proceedings become final.

Constitution of India, 1950—Article 21—Applicability of in respect of Compulsory Acquisition of land by State—Owners unwilling to offer their lands—Whether violates Article 21—Held : No—The Land Acquisition Act provides solatium for compulsory acquisition. The acquisition is in accordance with law. Article 21 will not apply when the State is exercising its power of eminent domain. Therefore the acquisition does not violate right to livelihood or right to shelter or dignity of person.

Practice and Procedure—New plea—Question raised before High Court but not argued—Held, mixed question of facts or law cannot be allowed to be raised for the first time in appeal.

The Land Acquisition Officer issued a notification to the petitioner Housing Society to acquire their land for public purpose. A declaration was made and the award was passed. Thereafter, the LAO determined the compensation at a sum of Rs. 13,11,2899.00 for the entire society. Dissatisfied with the amount of compensation offered by the LAO a reference under Section 18 was made which was pending for decision in the Court.

In the meantime the petitioner filed a writ petition. It was contended on behalf of the appellant that the Acquisition was violative of Article 21 of the Constitution as it violated the dignity of the person and deprived

A his right to shelter and also made him shelterless.

Dismissing the appeal and the Writ Petition, this Court

B HELD : 1. Once the award has been made and compensation has been paid or deposited under S.31 of the Land Acquisition Act, the LAO is entitled to take possession and the possession thereby stands vested in the State under S.16 of the Act free from all encumbrances. [172-E]

C 2. The State with a view to serve public purpose is entitled to acquire the land by exercising its powers of eminent domain and the Land Acquisition Officer is empowered under s.23 of the Act to determine the compensation to the land. Under the Scheme of the Act if the owner is dissatisfied with the determination of compensation made by the Collector, a reference is provided for and the court would on adduction of evidence by the parties determine proper compensation payable to the acquired land and burden is on the claimant to prove that the compensation offered is inadequate and seek determination of compensation. [173-D-E]

E 3. Right to shelter is undoubtedly a fundamental right. A person may be rendered shelterless but it may be to serve a large public purpose. Far from saying that he will be rendered shelterless the Court did not circumscribe the State power of eminent domain, even though a person whose land is being acquired compulsorily for the public purpose is rendered shelterless. If that is so no land can be acquired under the Act for any public purpose since in all such cases the owners/interested persons would be deprived of his property. He is deprived of it according to law. Since the owner is unwilling for the acquisition of his property for public purpose, S.23 [2] provides solatium for compulsory acquisition against his wishes. Therefore, the acquisition for public purpose cannot violate Article 21 of the Constitution or the right to livelihood or right to shelter or dignity of person. [173-G-H, 174-A]

G 4. It is settled law that the Court would consider only matter dealt with or stated in the order of the High Court. Several grounds might have been raised, but it often happens that only a few would be argued when the case was heard. The supreme Court cannot look into the averments made in the affidavit filed by the parties. Under these circumstances, it can be assured that though the contention was raised, the counsel had not argued H the matter. Therefore, the counsel cannot be permitted to raise mixed

questions or facts of law or disputed questions for the first time in appeal. A
[171-H, 172-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11876 of 1995.

From the Judgment and Order dated 26.4.93 of the Bombay High B
Court in W.P. No. 475 of 1993.

With

Civil Appeal No. 11877 of 1995.

From the Judgment and Order dated 7.6.93 of the Bombay High C
Court in W.P. No. 949 of 1993.

And

Writ Petition (C) No. 853 of 1993.

(Under Article 32 of the Constitution of India.) D

S. Ganesh, P.H. Parekh, Arvind Kumar Sharma, N.N. Keshwani, R.N. Keshwani and Sanjay Kumar for the Appellants.

A.S. Nambiar, Ms. A. Subhashini, Shashi Kiran, D.M. Nargolkar and E
Ms. Anil Katiyar for the Respondents.

The following Order of the Court was delivered :

Leave granted.

It is contended by the learned counsel for the appellants that the F
delay in making the award renders the proceedings under s.4(1) and s.6
declaration lapsed by operation of s.11-A of the Land Acquisition Act.
Unfortunately, this point was not argued before the High Court. Learned G
counsel contends that this question was raised in the High Court but was
not dealt with. It is settled law that this Court would consider only matters
dealt with or stated in the order of the High Court. Several grounds might
have been raised, but it often times happens that only a few would be
argued when the case was heard. We cannot look into the averments made
in affidavits filed by the parties in this Court. Under these circumstances,
it can be assumed that though the contention was raised, the counsel had H
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A not argued the matter. Therefore, we cannot permit the counsel, to raise mixed questions or facts of law or disputed questions for the first time in the appeal.

B It is next contended that the Land Acquisition Officer awarded at Rs. 50 per sq. ft. A total extent of 51,000 sq. ft. land is involved in these proceedings and in the city of Bombay it would be difficult for the appellants to acquire alternative flats with the amount offered by the Land Acquisition Officer. The theory of restitutive compensation is not applicable to determine compensation under s.23(1) of the Land Acquisition Act 1 of 1894. It is also sought to be contended that the respondents
 C admitted in the affidavit filed in the High Court that the value of the compensation is much more than what was determined by the Land Acquisition Officer. Since reference proceedings are pending in the High Court on the original side for determination of compensation, we decline to go into the question. It is, therefore, argued that a direction may be
 D issued not to have the appellants ejected till the reference proceedings become final. We cannot accede to the contention. Once the award has been made and compensation has been deposited or paid under s.31 of the Act, the Land Acquisition Officer is entitled to take possession and the possession thereby taken stands vested in the State under s.16 of the Act free from all encumbrances. Under those circumstances, we cannot give
 E the direction sought for. The appeal is accordingly dismissed. No costs.

It is needless to mention that a request may be made to the learned Judge of the original side to disposed of the reference application as expeditiously as possible.

F *C.A. @ SLP (c) No. 13371/93 & WP (C) No. 853/93 :*

Leave granted. The appeal and the Writ Petition are disposed of together.

G The only controversy raised in these cases is whether Art.21 of the Constitution would apply when the land is acquired by the State exercising its power of eminent domain. Admittedly, New Riviera Coop. Housing Society, Bombay consists of several flats which was notified for acquiring the land for public purpose. Flat No. 27 which belonged to the appellant is part of the above flats. Consequent to the notification published under
 H s.4(1) of the Act followed by declaration under s.6, the Land Acquisition

Officer made his award under s.11 on 22.1. 1993. He determined the compensation at a sum of Rs. 13, 11, 299 for the entire building. Dissatisfied with the amount offered by the Land Acquisition Officer, a reference under s.18 was sought for and the matter is now pending decision in the court for determination of compensation. A

The appellant herein filed a writ petition contending that the acquisition is violative of Art. 21 of the Constitution violating his dignity of person, and deprives his right to shelter and also make him shelterless. He referred to various steps taken by him to have his title to the flat established. It is not necessary to dilate upon all the details in that behalf. Suffice it to state that as on the date of the notification, he was the owner of flat No. 27. The question is whether the acquisition offends Art. 21. The State with a view to serve public purpose is entitled to acquire the land by exercising its power of eminent domain and the L.A.O. is empowered under s.23 of the Act to determine the compensation to the land acquired. Under the scheme of the Act if the owner is dissatisfied with the determination of compensation made by the Collector under s.11, a reference under s.18 is provided for and the court would, on adduction of evidence by the parties determine proper compensation payable to the acquired land under s.23(1) of the Act. Burden is on the claimant to prove the compensation offered is inadequate and seek determination of compensation under s.23(1). B C D E

Three decisions of this Court have been cited by the learned counsel for the appellant for which reference is unnecessary for the reason that in none of the cases the question of validity of acquisition by the state exercising its power of eminent domain was put in issue on the anvil of Art. 21. All those cases relate to providing alternative sites. Right to shelter is undoubtedly a fundamental right. A person may be rendered shelterless, but it may be to serve a larger public purpose. Far from saying that he will be rendered shelterless this Court did not circumscribe the state's power of eminent domain, even though a person whose land is being acquired compulsorily for the public purpose is rendered shelterless. If that contention is given credence no land can be acquired under the Act for any public purpose since in all such cases the owner/interested person would be deprived of his property. He is deprived of it according to law. Since the owner is unwilling for the acquisition of his property for public purpose, s.23(2) provides solatium for compulsory acquisition against his wishes. Under these circumstances, it cannot be held that the acquisition for public H

A purpose violates Art. 21 of the Constitution or the right to livelihood or right to shelter or dignity of person.

In a case where the State comes forward with proposal to provide alternative sites, certainly the court gives effect to that proposal and appropriate directions in that behalf were issued by this Court. But that principle cannot be extended as a condition in every case of acquisition of the land that the owner must be given alternative site or flat. Only exception was as provided in s.31(3) of the Act which does not apply to the petitioner. If that principle is extended, in no circumstances the State could acquire any land for public purpose. Thus considered, we are of the view that there is no substance in the contention raised by the counsel for the appellant that the acquisition of the land violates his right to life offending Art. 21 of the Constitution.

It is next contended that the acquisition is vitiated by *mala fides*. We find no substance in this contention as well. It is true that on the earlier occasion when the flats were requisitioned by the State of public purpose, namely, allotment to officers, Central or State Governments at the instance of the owners, litigation had ended by an amendment to the local Act giving further life for the eviction of the person in possession. It is not necessary in this case to dilate on that aspect to the matter. There was a dispute with regard to the title between the appellant and his predecessor in title. That is not a ground to hold that the acquisition is *mala fide*. As stated earlier, since all the flats including flat No. 27 have been acquired for public purpose, the question of *mala fides* does not arise.

The appeal and the Writ Petition are accordingly dismissed but in the circumstances without costs.

P.C.

Appeal and Petition dismissed.