

INDORE DEVELOPMENT AUTHORITY

v.

SHRI BALAKRISHNA AND ORS.

AUGUST 5, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*M.P. Town Improvement Trust Act 1960/M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 :*

*Ss.52, 70 and 71/Adhiniyam 54—Acquisition of land for public purpose—Notification under s.71(2) published on 22.07.1973—Writ petition by land owners on the ground that since possession was not taken from them as provided under sub-sections (3) and (4) of s.71, the scheme has failed—Held, scheme framed by the Trust was sanctioned by the Government—Once sanction for acquisition of land was accorded under s.70 and Notification was published under s.71(2), the land should be deemed to have been vested in the State free from all encumbrances—Vesting is complete on the date of publication of Notification under s.71(2)—Vesting is not kept in jeopardy or postponed or does not become incomplete till actual possession is taken by the authorities under s.71(3) or s.71(4)—steps required to be taken under Sub-section (3) or (4) of s.71 are only ministerial acts—Since the proceedings are pending s.54 of 1973 Adhiniyam has no application.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10690 of 1996.

From the Judgment and Order dated 19.4.94 of the Madhya Pradesh High Court in Misc. P. No. 885 of 1987.

A.K. Chitale, S.K. Gambhir and Vivek Gambhir for the Appellant.

U.N. Bachhawat, A.P. Dhamija and S.K. Jain for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel for the parties.

This appeal by special leave arises from the order of the Division

A Bench of the M.P. High Court made on April 19, 1994 in Misc. Petition No. 885/87. The admitted facts are that Town Improvement Scheme No. 54 was framed under the provisions of the M.P. Town Improvement Trust Act (for short, 'Trust Act'). The Scheme consists of 629.43 acres of land situated in Indore of which 4.85 acres is the subject matter in this appeal.

B The Government had sanctioned this scheme under Section 54 of the Act. On September 16, 1966, the scheme was published in the State Gazette under Section 52(1) of the Act. Therefore, it is a conclusive evidence that the scheme was framed and sanction was duly granted by the Government. In other words, it has given conclusiveness to the public purpose. The Government under Section 70 of the Act accorded sanction for the acquisition of the land. Notification under Section 70(1) of the Act was published on August 22, 1973. Consequently, by operation of Section 71(2) of the Act, the land on and from the date of such publication, stood vested absolutely in the trust free from all encumbrances. Sub-section (3) gives power to the trust to give notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof, to the trust or to any person duly authorised by it in this behalf within thirty days of the service of the notice. In case the person in possession does not surrender or refuses to deliver possession, under sub-section (4), the trust has been empowered to take possession of the land and for that purpose cause such force to be used as may be necessary to take possession of the land.

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The respondents filed the writ petition in the High Court questioning the validity of the acquisition on the ground that since possession was not taken from them, the land did not vest in the State and, therefore, the scheme had failed. The High Court in the impugned order relying upon the scheme in the Land Acquisition Act, 1894 (1 of 1894) (for short, the 'Act'), in particular Section 16 thereof and in view of the cases decided in that behalf, held that since possession was not taken, the scheme has lapsed. Thus, this appeal by special leave.

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It is contended by Shri A.K. Chitale, learned senior counsel for the appellant, that the High Court was wholly wrong in its conclusion that the scheme had lapsed on failure to take possession of the land. He has specifically drawn our attention to Section 71(2) of the Trust Act. Shri Bachhawat, learned senior counsel for the respondent, now sought to place reliance, though not pressed in the High Court, on section 54 of M.P. Nagar Tatha Gram Niyesh Adhiniyam, 1973 (for short, the 'Adhiniyam'). It

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is contended that if the scheme is not commenced within in a period of two years or completed within a period of five years from the date of the final notification, the final scheme under Section 50 on expiry of the said period shall stand lapsed. Accordingly it is contended that the scheme is no longer in existence. He also contended that though the land stands vested in the State on the publication of the notification under Section 70(2) of the Trust Act until possession is actually taken the vesting is not complete and, therefore, by operation of Section 54 of the 1973 Adhiniyam, the possession cannot be taken. He also contends that under Section 56 of 1973 Adhiniyam, until the agreement is arrived at between the parties, on expiry of the period of three years from the date of the notification under Section 52 of the Trust Act, if the Town Development Scheme under Section 50 of the Adhiniyam, 1973 has not been implemented within three years therefrom, it shall stand lapsed. On requisition by the Trust and acceptance thereof by the Government, appropriate procedure under the Act shall be pursued and compensation paid. In this case, that procedure was not adopted. Therefore, in either event the acquisition is not valid in law. We find no force in the contention.

It is seen that the scheme framed by the Trust and submitted to the Government under Section 52 of the Trust Act, the sanctioned scheme should be published which gives conclusiveness that valid scheme was framed as per presumption under Section 52(2) and sanction was duly granted by the Government. In other words, the sanction given by the Government accords conclusive evidence of due compliance of law and that proposed land is needed for public purpose for acquisition of the land by the Trust under the provisions of the Trust Act. Once the sanction for acquisition of land thereof was accorded under Section 70 and notification was published under Section 71(2), the land should be deemed to have been vested in the State covered by the scheme free from all encumbrances. Thereby, the vesting is complete on the date of publication of the notification under Section 71(2). It was done on August 22, 1973. The steps required to be taken under sub-section (3) and sub-section (4) of Section 71 are only ministerial acts. Therefore, vesting is not kept in jeopardy or postponed or becomes incomplete till actual possession is taken by the authorities under Section 71(3) or 71(4) as the circumstances so warrant, by issuance of notice and expiry of thirty days in the event of failure to deliver or surrender possession by the person in possession of the land vesting in the State; thereafter possession could be taken as per procedure

A in sub-section (4) of Section 71. It would, therefore, be clear that vesting is complete as soon as the notification under sub-section (2) of Section 71 was published and thereafter the land vested is free from all encumbrances. It is true that under the Adhiniyam, Section 54 enjoins the town or country development authority to commence the scheme within two years and complete the scheme within five years from the date of sanction. On failure of either of the events, the scheme got lapsed. Section 54 reads as under :

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C "54. If the Town and Country Development Authority fails to commence implementation of the Town Development Scheme within a period of two years or complete its implementation within a period of five years from the date of notification of the final scheme under Section 50, it shall, on expiration of the said period of two years or five years, as the case may be, lapse;

D Provided that, if a dispute between the authority and parties, if any, aggrieved by such scheme is brought before a Court or tribunal of competent jurisdiction, for consideration, the period for which such dispute pending before such court or tribunal shall not be reckoned for determination of the lapse of the scheme."

E By the proviso the time taken by the proceedings in court would be excluded from computation of the period for considering the lapse. Under those circumstances, it cannot be held that the scheme has lapsed. Since the proceedings are pending, Section 56 of the Adhiniyam is equally has no application. So the need to avail the remedy under the Act 1/1899 does not arise.

F The appeal is accordingly allowed. The order of the High Court stands set aside. The writ petition stands dismissed. No costs.

R.P.

Appeal allowed.