

JAIPUR DEVELOPMENT AUTHORITY

A

v.

SITA RAM AND ORS.

FEBRUARY 3, 1997

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

B

*Land Acquisition :*

*Rajasthan Urban Improvement Act, 1959 :*

*S. 52—Notification published—Act repealed—Decision to continue the acquisition under the repealed Act—Fresh notifications issued—Challenged in writ petitions—High Court holding that the notification issued was not valid in law—On appeal held, framing of a scheme is a pre-condition for acquisition of land is not a correct proposition of law—Notification for acquisition cannot be quashed on that account.*

C

D

*Pratap v. State of Rajasthan, [1996] 3 SCC 1 & State of Tamil Nadu & Ors. v. L. Krishnan & Ors., [1996] 1 SCC 250, relied on.*

*State of Tamil Nadu v. Mohd. Yousef, [1991] 4 SCC 224, referred to.*

E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 704-731 of 1997.

From the Judgment and Order dated 9.9.93 of the Rajasthan High Court in W.P. Nos. 1124, 1187-98, 1236-39, 1241, 1245, 1264-66, 1366, 1383-85, 1424 and 1820 of 1984.

F

S.K. Bhattachary for the Appellant.

Sushil Kumar Jain and Krishan Singh Chauhan for the Respondents.

The following Order of the Court was delivered :

G

Leave granted.

These appeals by special leave arise from the judgment dated September 9, 1993 of the Division Bench of the Rajasthan High Court made in C.W.P. No. 1124/84 and batch.

H

A Notification under Section 52 of the Rajasthan Urban Improvement Act, 1959 was published on October 8, 1979. Thereafter, the Jaipur Development Authority took a decision after the Jaipur Development Authority Act had come into force to continue the acquisition under the repealed Act. Consequently, fresh notification was issued on April 20, 1984.

B The same case to be challenged in the Writ Petitions. The Division Bench of the High Court has held that unless the scheme under the Jaipur Development Authority Act has been properly framed, notification issued is not valid in law. This question was considered by this Court in *Pratap v. State of Rajasthan*, [1996] 3 SCC 1. In fact the decision under appeal was expressly held not a good law. This Court had held thus :

C "14. There is also no merit in the contention of the learned counsel for the appellants that the decision of the Division Bench of the Rajasthan High Court rendered in 1993 in Narain case can in any way affect the present proceedings. Firstly, the said decision of

D Division Bench of the Rajasthan High Court is not final because the Special Leave Petition (C) Nos. 3100-3127 of 1994 (the present appeal) have been filed and the same are pending in this Court; secondly this decision has not been approved by a Full Bench of the Rajasthan High Court in its judgment dated 1.11.1995 in Urban Improvement Trust V. State of Rajasthan and the other connected

E cases. In this judgment, dealing with Narain case the Full Bench observed as follows :

F The Division Bench of this Court in the case *Narain v. State of Rajasthan*, has held that the acquisition proceedings cannot be taken in the absence of sanctioned notified scheme. This view has been taken by interpreting only para 9 of the Supreme Court decision of *Gandhi Grah Nirman Sahkari Samti Ltd.* case to the facts and circumstances of the case before the Division Bench. Consideration of paras 8 and 11 of the Supreme Court decision does not find place in the decision of the Division Bench. As stated

G above, the combined effect of paras 8, 9 and 11 of the Supreme Court decision seems to be otherwise. With utmost respect, it is difficult to agree with the observations made and view expressed by the Division Bench in the case of Narain as regards the decision of the Supreme Court in the case of *Gandhi Grah Nirman Sahkari Samiti Ltd.*

H

It is indeed unfortunate that the judgment of the Division Bench in Narain case was relied on, when the same had been overruled by the Full Bench of that Court without referring to the Full Bench decision. Furthermore even on merits we find that the said decision of the Division Bench of the Rajasthan High Court in Narain case does not lay down the correct law and the later decision of the Full Bench is correctly decided. The contention which was raised before the High Court, and it succeeded, in Narain case was that there could be no proceedings for acquisition which do not conform with the provisions of the master plan inasmuch as the master plan shows one particular use for the land in question, the said land could not be acquired for a different purpose. It was further contended that without framing of a scheme land could not be acquired under Section 52 of the said Act. In upholding this contention the High Court placed reliance on the two-Judge Bench decision of this Court in *State of Tamil Nadu v. A. Mohd. Yousef*, [1991] 4 SCC 224.

Even the decision in *State of Tamil Nadu v. Mohd. Yousef*, [1991] 4 SCC 224 has been over-ruled by a later decision of three-Judge Bench of this Court in *State of Tamil Nadu & Ors. v. L. Krishnan & Ors.*, [1996] 1 SCC 250. Therefore, the view of the High Court that framing of a scheme is a pre-condition for acquisition of land is not a correct proposition of law. The notification for acquisition cannot be quashed on that account.

The appeals are accordingly allowed. The judgment of the High Court stands set aside, Consequently, the writ petitions stand dismissed. No costs.

G.N.

Appeals allowed.