

PETITIONER:
BAGH AMBERPET WELFARE SOCIETY

Vs.

RESPONDENT:
TULSI COOPERATIVE HOUSING SOCIETY AND ORS.

DATE OF JUDGMENT 17/08/1990

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
KANIA, M.H.
VENKATACHALLIAH, M.N. (J)

CITATION:
1990 SCR (3) 782 1990 SCC (4) 468
JT 1990 (3) 497 1990 SCALE (2) 253

ACT:

Land Acquisition Act, 1894: Sections 4, 5 and 6--Acquisition of land in which two Societies claiming interest--Settlement of disputes--Not forthcoming---Matter remitted to High Court.

HEADNOTE:

For the purposes of a housing project, some land was acquired by way of a notification under the Land Acquisition Act. The Respondent Society claiming that it had entered into a contract with the owners for purchasing the very property, applied for exemption under the Urban Ceiling Act. The exemption prayed for was refused initially, but was granted later.

Both the Respondent Society and the owners of the said land filed Writ Petitions before the High Court for quashing of the acquisition proceedings. The acquisition was upheld by Single Judge, but on appeal by Respondent Society, the Full Bench held the acquisition proceedings to be inoperative. Against these orders, the appellant Society which had entered into an agreement with the Municipal Corporation, and as such interested in the acquisition, has preferred the appeals.

Meanwhile, the State Government withdrew the exemption granted under the Urban Ceiling Act. One of the owners filed a Writ Petition before the High Court challenging the withdrawal. The High Court took note of the fact that the matters were pending in this Court and dismissed the petition. Aggrieved against the order of dismissal, a petition for special leave has been filed.

The Respondent Society also moved the High Court by way of a Writ Petition challenging the withdrawal of exemption, which was pending and this Court transferred the same to itself, to be heard with the pending cases.

On 7.8.1985, this Court gave time to Counsel to consider various compromise proposals. However, the desired compromise did not come through. On 23.8.1988 this Court passed an order holding that the

783

acquisition proceedings have to be revived. However, no formal disposal was recorded since a settlement was being

negotiated. Even after about 2 yrs. the settlement did not fructify.

Remitting the matters to the High Court,

HELD: 1. If the settlement does not fructify, the effect of the decision that the acquisition proceedings are to revive, would be that the claim to the land by Respondent Society would come to an end. In that event, at the most that Society would only be entitled to such compensation as may be awardable in law. If the acquisition proceeds the appellant Society and the Municipal Corporation would have to workout their mutual rights. Apart from these, the two writ petitions challenging the withdrawal of the exemption by order dated 23.6.1983 would also have to be disposed of on merits. In view of the fact that the owner's writ petition was dismissed not on merits but on other considerations, the said dismissal should be vacated and that writ petition should be heard along with Writ Petition No. 6500/83 as a common question arises for determination. The order of the High Court dated 13th of June, 1988, is set aside and the High Court is directed to dispose of the Writ Petition afresh on merits. [787B-D]

2. If the High Court is of the opinion that the matter should be settled and the entire land of the owners amounting to 18 acres and 3 gunthas should be divided between the two Societies, it will be free to do so if Government also agrees thereto. Since that arrangement would be with the consent of the State Government it would in such an event be open to the High Court to nullify the acquisition. The observations made at different stages during the pendency of the proceedings in this Court may not be taken to be expression of opinion on merits and the High Court would be free to deal with the matter on its own discretion and in accordance with law. [787F-G]

3. In the event of the settlement not coming through, the acquisition proceedings would continue under the law and be concluded by the Land Acquisition Officer in accordance with law. In the event of the acquisition working out, the two writ petitions against the withdrawal of exemption would not be sustainable as the land would vest in Government as a result of acquisition. It would be open to the Government or the acquiring authority to take into account the effect of the laws of urban ceiling. [787H; 788A]

4. The civil appeals are also remitted to the High Court limited to

784

the consideration of the proposals' for settlement in the light of the observations made in this Judgment. Otherwise, they must be taken to have been concluded in this Court on the finding that acquisition proceedings are valid and shall be entitled to continue. The special leave petition is disposed of with a direction that the writ petition in the High Court shall be re-heard. The transferred writ petition remitted to the High Court for disposal, [788B-C]

5. Money, if any, in deposit in the Registry of this Court to the credit of the parties shall be transferred to the High Court and shall be subject to such directions as the High Court may issue upon a final decision of the relevant issues arising in the proceedings. [788D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 578485 of 1983.

From the Judgment and Order dated 2.3.1983 of the Andhra

Pradesh High Court in W.A. Nos. 170 and 171 of 1982.

WITH

Special Leave Petition (Civil) No. 1679 of 1989 and Transfer case No. 29 of 1989.

From the Judgment and Order dated 13.6.1988 of the Andhra Pradesh High Court in Writ Petition No. 5498 of 1983.

T.S. Krishnamurthy Iyer, Dr. V. Gouri Shankar, Meeraj Khayyam, R.N. Keshwani, M. Qamaruddin, P.N. Mishra and Mrs M. Qamaruddin for the Appellant.

Dr. L.M. Singhvi, S.K. Shashtri, D.N. Mishra and T.V.S.N. Chart for the Respondents.

C. Sitaramaiah and G. Prabhakar for the State of Andhra Pradesh.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. The appeals are by special leave the transferred writ petition by respondent No. 1 in the Civil Appeals is writ petition before the Andhra Pradesh High Court being 6500 of 1983 in a connected proceedings. The special leave petition is by the
785

owner of some lands which form the subject-matter of acquisition.

On 5.6.1975 21.10 acres of land located at Bagh Amberpet in Hyderabad said to be belong to Syed Azam and members of his family were notified to be acquired under S. 4(1) of the Land Acquisition Act for a housing project undertaken by the Hyderabad Municipal Corporation in collaboration with HUDCO. Enquiry under s. 5A of the Act was dispensed with by a separate notification issued along with the preliminary notification. On 25.4.1978, notification under S. 6 of the Land Acquisition Act was made. Tulsi Cooperative Housing Society on the plea that it had entered into a contract of purchasing the very property from the owners had applied for exemption under the Urban Land Ceiling Act. On 17.10.1978, prayer for exemption was refused. On 11.9.1980 exemption was, however, granted. Thereupon two writ petitions were filed before the High Court--one by Tulsi Cooperative Housing Society and the other by the owners of the property for quashing of the acquisition proceedings. The learned Single Judge upheld the acquisition but the writ appeal of Tulsi Cooperative Housing Society were allowed by a Full Bench of the High Court as a result of which the acquisition proceedings were held to be inoperative.

Bagh Amberpet Welfare Society had entered into arrangement with the Hyderabad Municipal Corporation for being assigned land for construction and was, therefore, interested in the acquisition. The civil appeals are by that Society challenging the decision of the Full Bench of the High Court in the two writ appeals filed by Tulsi Cooperative Housing Society.

On 23.6.1983, the exemption which had been granted on 11.9.1980 was withdrawn by the State Government. Syed Azam, one of the owners, challenged the withdrawal of the exemption by filing a writ petition before the High Court. The High Court took note of the position that the dispute was already pending in this Court and, therefore, by its order dated 13.6.1988, dismissed the petition without entering into the merits. That has led the owner to move this Court by special leave.

Tulsi Cooperative Housing Society also moved the High Court by filing Writ Petition No. 6500/83 against the withdrawal or the exemption. That petition was pending adjudication before the High Court and at the instance of the parties this Court directed transfer of that case to this Court to be heard along with the pending matters. This is

how Transferred Writ Petition No. 29/89 forms part of this group of litigation.

786

On 7.8.1985, this Court desired that the dispute should be settled amicably and accordingly certain proposals were examined. As already noticed, the acquisition was of 20.10 acres of land. 18 acres and 3 gunthas belonged to the Azam family and at one stage each of the two Cooperative Societies had agreed to take 9 acres and 1-1/2 gunthas thereof. The Secretary to Andhra Pradesh Government in the Urban Development Department responded to the settlement by saying:

"Since the compromise is arrived at between both the aggrieved parties before the Requisitioning Officer based upon the opportunity given by the Supreme Court, the State Government need not intervene in regard to land acquisition. Necessary and just orders under the circumstances of the case may be passed on the basis of the compromise deed filed by both the Societies at the earliest possible to enable them to build houses."

This Court, however, gave time to the counsel for the State of Andhra Pradesh to take instructions as to the application of the Urban Land Ceiling Act as exemption granted under s. 20 had been withdrawn in June, 1983. The State of Andhra Pradesh thereafter did not accept the compromise by taking the stand that proceedings under the Urban Land Ceiling Act were pending and in view of the fact that there was no exemption, the property was liable to vest in Government under the Act as surplus land.

This Court on August 23, 1988, made an order, the relevant part of which is extracted:

"We are not impressed by the stand taken by the writ petitioners that there was justification for their not approaching the court for six years after the s. 4(1) notification, when they wanted to challenge the denial of the hearing under S. 5A of the Act and the proceedings itself otherwise. We agree with the learned Single Judge that the explanation not being acceptable, the writ petition has been rightly dismissed. On this analysis the appellate judgment of the High Court cannot be sustained and the acquisition proceedings have to be revived."

This order virtually disposed of the appeals but as the parties were negotiating a settlement the Court did not record a formal disposal of the dispute.

787

If the settlement does not fructify, the effect of our decision that the acquisition proceedings are to revive, would be that the claim to the land by Tulsi Cooperative Housing Society would come to an end. In that event, at the most that Society would only be entitled to such compensation as may be awardable in law. If the acquisition proceeds the Bagh Amberpet Welfare Society and the Municipal Corporation would have to work out their mutual rights. Apart from these, the two writ petitions challenging the withdrawal of the exemption by order dated 23.6.1983 would also have to be disposed of on the merits. The owner's application has been dismissed upon the High Court taking the view that the matter was before this Court and, therefore, the High Court would not entertain the dispute. The challenge by Tulsi Cooperative Housing Society against the said withdrawal was before the High Court for adjudication. In view of the fact that the owner's writ petition was dismissed not on merits but on other considerations, we are of the view that the said dismissal should be vacated and that writ petition should be heard along with Writ Petition No. 6500/83 as a

common question arises for determination. We, therefore, set aside the order of the High Court dated 13th of June, 1986, and direct that the said writ petition shall be disposed of afresh on merits.

We are of the view that the entire litigation should go back to the High Court for appropriate disposal. The transferred writ petition, therefore, shall also go back to the High Court and shall be dealt with as Writ Petition No. 6500 of 1983. The two petitions challenging the withdrawal of exemption shall be clubbed together and be heard. The proposals undertaken relating to a settlement in regard to the 18 acres and 3 gunthas of land may be considered by the High Court in the light of all relevant material and circumstances. If the High Court is of the opinion that the matter should be settled and the entire land of the owners amounting to 18 acres and 3 gunthas should be divided between the two Societies, it will be free to do so if Government also agrees thereto. Since that arrangement would be with the consent of the State Government it would in such an event be open to the High Court to nullify the acquisition. The observations which we have made at different stages during the pendency of the proceedings in this Court may not be taken to be expression of opinion on the merits and the High Court would be free to deal with the matter in its own discretion and in accordance with law.

In the event of the settlement not coming through the acquisition proceedings would continue under the law and be concluded by the Land Acquisition Officer in accordance with law. In the event of the

788 acquisition working out, the two write petitions against the withdrawal of exemption would not be sustainable as the land would vest in Government as a result of acquisition. It would be open to the Government or the acquiring authority to take into account the effect of the laws of urban ceiling.

The civil appeals are remitted to the High Court limited to the consideration of the proposals for settlement in the light of the observations hereinabove. Otherwise, they must be taken to have been concluded in this Court on our finding that acquisition proceedings are valid and shall be entitled to continue. The special leave petition of Azam is disposed of with a direction that the writ petition in the High Court shall be re-heard. The transferred writ petition is remitted to the High Court to be disposed of as Writ Petition No. 6500 of 1983. The hearing of the writ petitions would depend upon the fate of the settlement as indicated above. There would be no order for costs in this Court.

Money, if any, in deposit in the Registry of this Court to the credit of the parties shall be transferred to the High Court and shall be subject to such directions as the High Court may issue upon a final decision of the relevant issues arising in the proceedings.

G.N.
disposed of.

Appeals and Petitions

789