

PETITIONER:
GANDHI GRAH NIRMAN SAHKARI SAMITI LTD. ETC.ETC.

Vs.

RESPONDENT:
STATE OF RAJASTHAN AND ORS.

DATE OF JUDGMENT 30/03/1993

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
KASLIWAL, N.M. (J)

CITATION:
1994 AIR 2329 1993 SCR (2) 788
1993 SCC (2) 662 JT 1993 (3) 194
1993 SCALE (2) 342

ACT:
Rajasthan Urban Improvement Act, 1959: Sub-Section (1) of Section 52--Degree of detail in specifying purpose (s) for which land is to be acquired: When sufficient--Whether size of parcel of land a determinative factor.
Period of limitation : Computing of--The period for which proceedings stayed or injunction issued by court excluded.

HEADNOTE:
Sub-sections (1) and (2) of Section 72 of the Rajasthan Urban Improvement Act, 1959 (the Act) lay down the restrictions on improvement in urban areas and Section 2(i)(vi) defines the term 'improvement'. No person or Government department can undertake any 'improvement' unless it is in accordance with either the master plan in operation or with a 'scheme' made by a Trust and sanctioned and notified under section, 38 of the Act or, if neither a master plan nor a scheme is in force, with the 'general approval' of the Trust after obtaining the permission of the Trust under Section 73 of the Act.
If it appears to the government that the said land is required for the purpose of improvement or for any other purpose under this Act, then the State Government may acquire such land by publishing in the Official Gazette a notice, under Section 52(1) of the Act, specifying the particular purposes for which such land is required and stating that the government has decided to acquire that land under section 52(1) of the Act. Before such publication the State Government is to serve, in the prescribed manner, notice on the owner(s) of the land and on any other person who, in the opinion of the government, may be interested therein, and it shall also be published in the manner prescribed. The appointed officer, on receipt of objections from all interested persons, must afford to them an opportunity to be heard; and after making such enquiry as is considered necessary by him, he is to submit the case, alongwith the record of proceedings and his report, to the government for a decision.

789
Gandhi Garh Nirman Sahkari Samiti (the Samiti) purchased from Shankerpura and Hathirohi situated in Jaipur, for a

sum of Bhawani Singh 3,49,000 sq. yards of land in villages Bhojpura, Bhawani Rs,1,02,00,000 by way of three registered deeds of conveyance. The Samiti submitted on June 24, 1972 its development plan for 500 residential plots in that land of the Urban Improvement Trust (the Trust) for sanction. The Trust raised some objections and referred the matter to the State Government which, in turn raised further objections. On March 24, 1973 the State Government issued notice under section 52(2) of the Act to the Samiti and other interested persons. On March 26, 1973 a notice was also issued to Bhawani Singh. After receiving objections in reply, to these, notices, the appointed officer, namely Officer-on-Special Duty, Town Planning Department, Government of Rajasthan, heard the parties and submitted his report dated April 2, 1974 to the State Government. The State Government, rejecting the objections, issued two notifications both dated July 11, 1974 under section 52(1) of the Act. These were published in the Rajasthan Gazette dated September 27, 1974.

By way of Writ Petitions before the High Court these appellants challenged the above acquisition. A learned Single Judge on October 15, 1982 allowed the petitions and quashed the acquisition proceedings. Upon appeal by the State a Division Bench on February 21, 1986 set aside the Judgment of the learned Single Judge. Hence the present appeals to this Court.

Rejecting the appellants contentions and upholding the judgement and order of the High Court this Court,

HELD: The State Government can acquire land at the instance of the Trust, a Government department or any prescribed authority under the Act where on a representation from the Trust "or otherwise It appears to the State Government that any land is required for the purpose of 'improvement' or 'any other, purpose' under this Act, i.e. either for the execution of the scheme framed by the trust, or for any other "public purpose" under Act. [196E-F]

The impugned notice under section 52(1) of the Act specifically states that the land is needed for the 'purposes, or development plans and construction of residential, commercial and administrative buildings'. The expression "appears' In section 52 (1) of the Act shows that it is not

790

necessary for the Government to frame detailed scheme before exercising its powers under Section 52(1); and the total area of land under the notification being very large more than 387 Bighas in the degree of details as to the particular purpose of acquisition specified in the notification was sufficient. The High Court after examining the original documents in the Government files made by the Secretary to the Town planning Department, the Minister for Town Planning Department, the Minister for Town Planning and the Chief Minister, was also satisfied that the State Government took the decision to acquire land by fully applying its mind. [797-B]

It is not for this Court to go into the comparative utility of two or more public purpose.

Aflatoon Ors. V. Lt. Governor of Delhi & Ors., [1975] 1 S.C.R 802, relied upon.

Madhya Pradesh Housing Board v. Mohd. Shafi & Ors., [1992] 2 SCR 168, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION.: Civil Appeal Nos. 1504-07/1993.

From, the Judgment and Order dated 21.2-1986 of the Rajasthan High Court in D.B.Civil Special Appeal No., 318-321 of 1982.

Shanti Bhushan, R.K. Jain, P. Chidambaram, M.L. Lahoty, Shambhu Pd., Singh, Ms. Shipra Khazanchi, V.B. Joshi, Sunil Gupta Ms. Deepa Dixit, K.J. John, Indirabir Singh, K.C. Gehani and Prem Sander Jha for the Appellants.

Arun Jaitley Kapil Sibal, Aruneshwar Gupta, Pushpendra, S. Bhat, K. Swami and Rambir Singh Mehta for the Respondents.

The Judgment of the, Court was delivered by KULDIP SINGH, J. Leave granted in all the special leave petitions. These appeals have arisen from land acquisition proceedings initiated by the State of Rajasthan under the Rajasthan Urban Improvement Act, 1959 (the Act). The acquisition proceedings were challenged by the appellants land owners by way of writ petitions under Article 224 of, the Constitution of India before the Rajasthan High Court A learned Single Judge allowed

791 the writ petitions on October 15, 1982 and quashed the proceedings. The appeals filed by the State of Rajasthan were, however, allowed by the Division Bench of the High Court on February 21, 1986 and the judgment of the learned Single Judge was set aside. These appeals, by the land-owners, are against the judgment of the Division Bench of the High Court.

The land is popularly known as Rambagh area and Princes House or Raj Mahal area. According to the appellants the lands were private properties of Maharaja of Jaipur. Gandhi Grah Nirman Sahkari Samiti (Samiti), the appellant, acquired the vacant parcels of the land situated in Rambagh Palace and in the compound of Raj Mahal comprising 3,49,000 sq. yards for a sum of Rs.1,02,00,000 by way of three deeds of conveyance executed on March 29, 1972 and registered on April 3, 1972.

After the purchase of the land, the Samiti prepared a development plan of the land according to which 500 residential plots of different sizes were to be developed on the land. The Samiti on June 24, 1972 submitted the development plan to the Urban Improvement Trust, Jaipur (the Trust) for sanction. The Trust raised objections and the matter was referred to the State Government. The State Government further raised objections and as such the matter remained under correspondence for quite some time.

On March 24, 1973 the State Government issued notice under Section 52(2) of the Act wherein the owners of the land and other interested persons were called upon to show cause as to why the land be not acquired. A separate notice dated March 26, 1973 was sent to the appellant Bhawani Singh. Objections were filed by the Samiti as well as by Bhawani Singh. The Officer-on-Special Duty, Town Planning Department, Government of Rajasthan heard the objections and submitted his report dated April 2, 1974 for the consideration of the State Government. The State Government rejected the objections and issued two notifications dated July 11, 1974 under Section 52(1) of the Act which were published in the Rajasthan Gazette dated September 27, 1974. It was at that stage that the appellants challenged the acquisition by way of writ petitions before the High Court. We may briefly notice the scheme of the Act. Section 2(1)(vi) defines the expression "improvement as under:

"'Improvement' with its grammatical variations means the

792

carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land or making provision for any amenity in, on, over or under any building or land and includes re-improvement;"

Chapter II deals with the preparation of master plan. The State Government finally approves the master plan which comes into operation from the date of its publication in the prescribed manner. Chapters III and IV of the Act deal with constitution of trusts and proceedings of the trusts/committees. Chapter V deals with the framing of schemes by the trust. We may notice Section 29 therein which is as under:

"29. Schemes: matters to be provided therein
(1) The Trust shall on the order of the State Government or on its own initiative or on a representation made by the Municipal Board and subject to availability of financial resources, frame schemes for the improvement of the urban area for which the Trust is constituted."

Sections 30 to 41A of Chapter V deal with the procedure for framing and sanction of the schemes. Chapter VI defines powers and duties of the Trust where a scheme has been sanctioned. Chapter VII provides for acquisition and disposal of land. Section 52 therein (as it was at the relevant time) is reproduced hereunder:

"Sec. 52-Compulsory acquisition of land:-

(1) where on a representation from the Trust or otherwise it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under this Act, the State Government may acquire such land by publishing in the official Gazette a notice specifying the particular purposes for which such land is required and stating that the State Government had decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section (1) the State Government shall b

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another notice call upon the

793

owner of the land and any other person who in the opinion of the State Government may be specified in the notice, why the land should not be acquired.

Such notice shall be individually served upon the owner of the land and any other person, who in the opinion of the State Government may be interested therein. It shall also be published in the Official Gazette at least 30 days in advance and shall be posted on some conspicuous place in the locality, where the land to be acquired is situate. Such publication and pasting of notice shall be deemed as sufficient and proper service of notice upon the owner of the land and upon all other persons who may be interested therein'.

(3) Within the time specified in the notice, the owner of the land or any other person interested therein may show cause and make objections, why the land should not be

acquired. Every such objections to the notice given under sub-section (2) shall be made in writing to the Officer-on Special Duty or any other officer appointed by the State Government for the purpose. Such officer shall give the objector an opportunity of being heard, either in person or by pleader and after hearing all such objections and after making such enquiry, as he deems necessary, submit the case for decision of the State Government together with the record of the proceedings held by him and a report, containing his recommendations on the objections. Thereafter, the State Government may pass such orders as it deems fit. The decision of the State Government thereon shall be final.

(4)When a notice under sub-section (1) is published in the Official Gazette, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances.

(5)Where any land is vested in the State Government under sub-section (4), the State Government may, by notice in writing, order any person who may be in posses-

794

sion of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf thirty days of the service of the notice.

(6)If any person refuses or fails to comply with an order made under sub-section (5), the State Government may take possession of the land and may for that purpose use such force as may be necessary.

(7)After the land has been acquired and its possession taken, the State Government shall, on payment of the amount of compensation as determined under Section 53, the amount of interest thereon and of all other charges incurred by the State Government in this connection, transfer, it to the Trust or to any other prescribed authority or department for the purpose for which it is acquired.

(8)Any notice issued or published by the State Government under this section may also be issued or published for and on behalf of it by any officer subordinate to it, so authorised."

Chapters VIII to XII deal with finance, general provisions as to improvement, rules and regulations, procedure and penalties and supplemental provisions. Section 72 in Chapter IX which is relevant is reproduced hereunder:

"72. Restriction on improvement in urban areas. (1) In an urban area, no improvement shall be undertaken or carried out by any person or department of the Government unless (i) it is in accordance with the master plan where it is in operation; or (ii) it is in accordance with the scheme sanctioned and notified under section 38; or (iii) where neither any master plan nor any scheme is in force, it is according to the general approval of the Trust,

795

and unless permission for undertaking or carrying out such improvement has been obtained in writing under the provisions of section 73.

(2) No person or department of Government shall use or permit to be used any land or building in any urban area otherwise than in conformity with the master plan where it is in operation or with the scheme sanctioned and notified under section 38 or with the general approval of the Trust, and unless the permission of the Trust for such use has been obtained under section 73:

Provided that subject to the provisions of section 73B, it shall be lawful for any person or department to continue to use, upon such terms and conditions, as may be prescribed by regulations made in this behalf, any land or building for the purpose and to the extent fo

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and to which, it is being used upon the date on which such plan or scheme comes into force or as the case may be, the area is declared as an urban area under this Act."

Improvement under the Act means, inter alia, the carrying out the building, engineering, mining or other operations in, on, over or under the land. The trust under Section 29 of the Act may frame schemes for the improvement of the urban area on its own initiative or on a representation made by the Municipal Board. Section 29 further makes it obligator on the trust to frame a scheme if so ordered by the State Government. Thus the State Government can take a decision at its own level to undertake an improvement and thereafter direct the trust to frame a scheme in that respect under the Act. Section 72 of the Act further indicates that apart from the trust any other department of the Government can undertake an improvement in accordance with the Master Plan. Section 52, which deals with compulsory acquisition of land, provides that the State Government may acquire land on a representation from the trust, or otherwise, which obviously means that the land under Section 52 of the Act can also be acquired when there is no representation from the trust and as such no scheme under Chapter V in existence.

Mr. Shanti Bhushan, learned counsel appearing for the appellants, has contended that the framing of a scheme by the trust under Chapter V

796

of the Act is the sine quo non for invoking the provisions of Section 52 of the Act. According to him the State Government has no authority to acquire land under Section 52 of the Act unless the same is required for the execution of a scheme framed and sanctioned under Chapter V of the Act. The crux of the argument is that the improvement in the urban area can only be carried out by executing the schemes framed under the Act and in no other way. We do not agree with Mr. Shanti Bhushan. Under the Scheme of the Act the improvement of the urban area can be undertaken by the trust and also by any of the departments of the Government. The framing of the scheme becomes mandatory only when the work is undertaken by the trust. The State Government, in any of its departments, may decide to develop the urban area under the Act and in that case it would not be necessary for the Government to have a scheme framed under Chapter V of the

Act. The power of the State Government to acquire land under the Act has been designed to meet the scheme of the Act. Under Section 52 of the Act the land can be acquired by the State Government at the instance of the trust, or a department of the Government or any prescribed authority. The plain language of Section 52(1) of the Act negates the contention raised by Mr. Shanti Bhushan. Where on a representation from the Trust or otherwise it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under the Act it can acquire such land by issuing a notification under Section 52(1) of the Act. It is, thus, clear that the State Government has the power to acquire land either for the execution of the schemes framed by the trust under Chapter V of the Act or for any other public purpose under the Act. No fault can be found with the procedure followed by the State Government in this case. The notification issued by the State Government under sub-section (1) of Section 52 of the Act specifically states that the land was being acquired for the construction of residential, commercial and administrative buildings. The Government having taken a policy decision to acquire land for the public purpose was justified in issuing the notification under Section 52(1) of the Act in respect of the land in dispute. We, therefore, see no force in the contention of Mr. Shanti Bhushan and reject the same.

Mr. Shanti Bhushan relied upon the judgment of this Court in *Rohtas Industries Ltd v. S.D. Agarwal & Anr.*, [1969] 3 SCR 108 and contended that there was no material whatsoever before the State Government to form requisite opinion under Section 52(1) of the Act that the land was required

797
for the purpose of improvement or for any other purpose under the Act. According to him no scheme was prepared by the State Government and it was not disclosed at any stage of the proceedings that the land was being acquired for undertaking improvements under the Act. We see no force in the contention of the learned counsel. The notice under Section 52(1) of the Act specifically declares that the land is needed "for the purposes of development plans and construction of residential, commercial and administrative buildings". The Division Bench of the High Court examined the original record and observed as under:

"The learned Advocate General also produced the relevant record containing the note of the Secretary, Town Planning Department signed by the Minister, Town Planning and the Chief Minister. It is only after such a decision of the State Government that the notices under Section 52(1) have been published in the Rajasthan Gazette."

The High Court was, thus, satisfied that the State Government took the decision to acquire that land by fully applying its mind. In any case the expression "where it appears to the State Government" in Section 52(1) of the Act shows that it is not necessary for the State Government to frame a detailed scheme or development plan before exercising powers under the said provision. It is sufficient if a decision in that respect is taken and the detailed scheme is left to be worked-out at the stage of execution of the plan. We, therefore, see no force in the contention of the learned counsel.

It is then argued that the award having not been made within two years from August 1, 1987, the acquisition proceedings have lapsed by operation of law. The argument is based on

Section 60-A of the Act as inserted by the Rajasthan Urban Improvement (Amendment) Act, 1987 (1987 Amendment). We may notice the relevant provisions of the 1987 Amendment:

"1. Short title and commencement. (1) This Act may be called the Rajasthan Urban Improvement (Amendment) Act, 1987.

(2) It shall be deemed to have come into force on 1st August, 1987.

2. Amendment of section 52, Rajasthan Act 35 of 1959

798

in section 52 of the Rajasthan Urban Improvement Act, 1959 (Rajasthan Act 35 of 1959), hereinafter referred to as the principal Act,

(a) in sub-section (1), for the words "by publishing in the Official Gazette a notice 'specifying the particular purpose for which such land is required and stating that the State Government has decided to acquire the land in pursuance of this section', the words, "under and in accordance with the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894)" shall be substituted;

(b)

(c)

(d)

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4. Insertion of new section 60A in Rajasthan Act 35 of 1959. After the existing section 60, the following new section shall be inserted in Chapter VII of the principal Act, namely:-

"60-A. Transitory provisions for pending matters relating to acquisition of land (1)

(2)

(3) Where in a matter pending on the date of commencement, a notice under sub-section (2) of section 52 or a notice under sub-section (1) thereof has been served or, as the case may be, published, such notice shall be deemed to be the notification or declaration published or made under sub-section (1) of section 4 or, as the case may be, under sub-section (1) of section 6 of the Land Acquisition Act and the declaration or award in such a matter shall be made within a period of one year or, as the case may be, two years from the date of commencement.

799

(4).....

(5)

(6)

The precise argument is that in terms of Section 60-A(3) of the A(it is mandatory to make an award within a period of two years from August: 1, 1987, the date of commencement of the 1987 amendment. Admitted' the award has not as yet been made and as such, according to the learned counsel, the acquisition proceedings have become null and void. We see no force in the contention of the learned counsel. The 1987 amendment came into force during the pendency of these appeals. The High Court while allowing the appeal of the State of Rajasthan observed as under

"On behalf of the petitioner it is prayed that the petitioners may be allowed four weeks time

for obtaining interim stay order from the Supreme Court and till then the operation of the judgment may be stayed. On this prayer Mr. N.L. Jain, Advocate General undertakes for four weeks that the judgment will not be executed and the petitioner also agrees that they will also maintain the status-quo for four weeks."

This Court on March 20, 1986 in SLP(C) Nos. 3775-76/86 passed the following order :

"Meanwhile the undertaking given by the State recorded in the order of the High Court will continue to operate."

In SLP(C) Nos. 3740/86 and 5366/86 this court on April 29, 1986 directed status quo as to possession. It is thus obvious that the proceedings in pursuance to the impugned judgment of the High Court remained stayed throughout under the interim orders of this Court. Section 52 of the Act as amended by the 1987 Amendment specifically provides that the acquisition under the Act has to be made in accordance with the provisions of the Land Acquisition Act, 1894 (1894 Act). Section 11-A of the 1894 Act as amended in 1984 is as under :

"11-A. Period within which an award shall be made The
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Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land

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(Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

Explanation to Section 11-A quoted above is a complete answer to the argument raised by the learned counsel for the appellants. Even otherwise it is well established principle of judicial procedure that where any proceedings are stayed by an order of a court or by an injunction issued by any court, that period should be excluded in computing any period of limitation laid down by law. This principal is normally followed unless the context of the statute provides otherwise.

Mr. S.K. Jain, learned counsel appearing for one of the appellants has contended that the public purpose has not been specifically mentioned in the notices issued by the State Government under sub-section (1) of Section 52 of the Act. He relies on the following observations of this Court in *Madhya Pradesh Housing Board v. Mohd Shaft and Ors.*, [1992] 2 SCC 168:

"Apart from the defect in the impugned notification, as noticed above, we find that even the 'public purpose', which has been mentioned in the schedule to the notification

as 'residential' is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law. There is no indication as to what type of residential accommodation was proposed or

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Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

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801

for whom or any other details. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in 'public interest' or for the benefit of the Public' or an identifiable section thereof In the absence of the details about the alleged 'public purpose' for which the land was sought to be acquired, no one could comprehend as to why the land was being

acquired and therefore was prevented from taking any further steps in the matter,"

The public purpose mentioned in the notification in Mohd. Shafi's case as "residential" was hopelessly vague as observed by this Court. But the notification in the present case specifically provides that the land was being acquired for the purpose of "development plan and construction of residential, commercial and administrative buildings". Apart from that in Mohd. Shafi's case the total land acquired was 2.29 hectares whereas in the present case much larger area is being acquired. The Division Bench of the High Court examined this question in the light of the observations of this Court in *Aflatoon & Ors. v. Lt. Governor of Delhi & Ors.*, [1975] 1 SCR 802 and rejected the argument on the following reasoning:

"It is true that these are all cases under the Land Acquisition Act and public purpose is required to be specified in the notification, but a contention has been advanced that the public purpose should be specified with particularity and the specification should not be vague. Such a contention was repelled. In Section 52(1), no doubt the requirement is that the notice should specify the particular purpose but having regard to the area of the land sought to be acquired, it was not possible to specify with precision, what land is required for which particular purpose. The total land acquired from village Bhojpura and Bhawani Shankerpura i.e. Rambagh area is 0322 Bighas 8 Biswas and the total area acquired from village Hathirohi, the residency area is 65 Bighas 16 Biswas. In view of the acquisition of the large areas, the notices fulfilled the requisite condition of specification of particular purpose and in our opinion, it was sufficient to state in the notices that the lands are required for ad-

802

ministrative, commercial and residential buildings.'

We see no infirmity in the above quoted reasoning of the High Court.

Mr; Jain then contended that the land subject-matter of acquisition includes a polo ground which is used for one of the major sports peculiar to Rajasthan. According to him the polo ground is serving a public purpose which is much more useful and important than the one for which the land is being acquired. We cannot go into the comparative utility of the public purposes. Once we are satisfied that the acquisition is for a public purpose, no fault can be found with the proceedings on the ground that the land is already being used for some beneficial purpose.

The Division Bench of the High Court has, after discussing the material on the record in detail found as a fact that ample opportunity of hearing was given to Bhawani Singh by the Officer-on-Special Duty who heard the objections. The High Court further found that the objections filed by the Samiti were fully considered by the said officer. We find no infirmity in the findings of the High Court and agree with the same.

The appeals are, therefore, dismissed. We, however, leave the parties to bear their own costs.

G.S.B.

Appeals dismissed.

803

JUDIS