

A

N. KRISHNAMACHARI

v.

THE MANAGING DIRECTOR APSRTC, HYDERABAD AND ORS.

AUGUST 12, 1994

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

*Land Acquisition Act 1894 : Sections 3(b), 4(1) and 6.*

C *State—Land acquisition—Challenge—Beneficiary of land—Whether has locus standi to be impleaded as necessary party—Acquisition—Notification—Declaration—Challenge to acquisition—Quashing of declaration and sustaining the notification—Validity of.*

D In the Land Acquisition proceedings initiated by the State of Andhra Pradesh, in which Respondent-Corporation was a beneficiary, the Revision Petition filed by the respondent-Corporation was dismissed by the High Court on the ground that Review does not lie at the instance of the Respondent- Corporation. However, in the review petition relating to the interest of the petitioner the Division Bench set aside the order quashing the Notification under section 4(1) and upheld the declaration published under section 6.

F In this Court it was contended on behalf of the petitioner that (i) on the question of locus standi of beneficiary to be impleaded as a party there was conflict of decisions of this Court in *The Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel & Ors.*, [1971] 3 S.C.C. 821 and *Himalyan Tiles and Marbles (P) Ltd. v. Francis Victor Coutinho*, [1980] 3 SCR 235; (ii) there is a conflict of operation of the orders in two cases regarding the same notification published under section 4(1) which was quashed at the instance of others in this case the declaration alone has been quashed sustaining the notification under section 4.

G

Dismissing the petition, this Court

H HELD : 1. Respondent-Corporation is a person interested within the meaning of section 3(b) of the Land Acquisition Act and that, therefore, it was entitled to support the validity of the notification issued under section 4(1) of the Act when it was the subject matter of the challenge in the High

Court. The High Court is, therefore, not right in its conclusion that the corporation is not an interested party and has committed grievous error of law in refusing the Review Petition. [611-D, E] A

2. The omission to bring to the notice of the court important provisions of law constitutes an infirmity in the judgment. Section 3(b) defined in wide language, would bring within its ambit the beneficiary to be a person interested. This was not brought to the notice of the Court in *Ahmedabad Municipal Corporation's* case. However, in view of the later development of law in later decisions starting with *Himalyan Tiles Case*. the conflict no longer subsists. [611-B, D] B

*Himalyan Tiles and Marbles (P) Ltd. v. Francis Victor Coutinho*, [1980] 3 S.C.R. 235, referred to. C

*The Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel & Ors.*, [1971] 3 S.C.C. 821, explained and held per incuriam. D

3. Notification under section 4(1) was published on July 8, 1988 and substance was published on July 28, 1988, paper publication too was done. Immediately, the Writ Petitions were filed and further proceedings were stayed by the High Court even before the declaration was published. Under these circumstances, the declaration section 6 published on July 11, 1988 obviously was illegal. Accordingly, the declaration alone was rightly quashed. [611-G, H] E

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 12213 of 1994. F

From the Judgment and Order dated 15.4.94 of the Andhra Pradesh High Court in Rev. W.P.M.P.No. 21086 of 1993.

K. Madhava Reddy, D. Prakash Reddy and Mrs. D. Bharathi Reddy for the Petitioner. G

B. Parthasarathy for the Respondents.

The following Order of the Court was delivered :

H

- A The Government of Andhra Pradesh published the Notification under s.4(1) of the Land Acquisition Act, 1894 on July 8, 1988 acquiring certain lands for the construction of bus stand complex in Tirupathi town (Lord Balaji Pilgrimage centre) followed by a declaration issued under s.6 with which we would later deal with. The notification was challenged by
- B the interested persons including the petitioner in W.P. Nos. 838/90, 12450/88, 12919/88 and 13631/88. In some of the Writ Petitions, the A.P.S.R.T.C. - the beneficiary impleaded itself as a party respondent to the Writ Petitions. When the Writ Petition had come up for final hearing, the name of the counsel for the Corporation was not printed in the cause list published by the High Court. Consequently the counsel could not notice
- C the posting of the Writ Petitions and the disposal thereof. Thereafter, the counsel filed an application for review of the orders of the Division Bench. We are informed that in two cases, the Review Petitions seem to have been dismissed on the ground that Corporation was not a party to the Writ Petitions and that, therefore, the Review Petition would not lie at their
- D instance. The Review Petition relating to the interest of the petitioner in the lands in concerned, by the impugned order dated April 15, 1994 in Review W.P.M.P. No. 21806/93, the Division Bench set aside the order quashing the notification under s.4(1) and upheld quashing the declaration published under s.6 of the Act. Thus, this special leave petition.
- E It is contended by Mr. Madhava Reddy, Learned Senior counsel that there is a conflict of decisions as regards self-same matters that two Review Petitions were dismissed relating to other claimants holding that the Corporation was not a necessary party, in other words it was not an interested party and Review Petition in the impugned order was allowed
- F by implication that the Corporation was an interested party. It is also further contended that on the question of locus standi of the beneficiary to be impleaded as a party, there is a conflict of decisions of this Court in *The Municipal Corpn. of the City of Ahmedabad v. Chandulal Shamaldas Patel & Ors.*, [1971] 3 SCC 821 and *Himalyan Tiles and Marbles (P) Ltd. v. Francis Victor Coutinho*, [1980] 3 SCR 235, and when this conflict was
- G brought to the notice of another bench that Bench has distinguished the decision of the Ahmedabad Municipal Corporation case (supra) and that therefore, the conflict still subsists and requires to be resolved. We do not find force in the contentions. In Ahmedabad Municipal Corporation case (supra) the Bench had held that when the property was acquired for the
- H benefit of the Municipal Corporation by the State, though ultimately the

municipality may be benefited, it has no right to file an appeal against the decision of the High Court as the Corporation is not an interested party. It would appear that s.3(b) of the Land Acquisition Act, definition of "person interested" had not been brought to the attention of the learned Judges. When s.3(b) defined in a wide language, would bring within its ambit the beneficiary to be a person interested, the omission to bring to the notice of the court important provisions of the law constitutes an infirmity in the judgment. However, in later decisions starting with *Himalyan Tiles case* (supra) this Court consistently has held that the beneficiary is a person interested to protect the interest which the beneficiary seeks to acquire in the land under the notification, including perfect title to the property and payment of proper compensation. Therefore, it is entitled to challenge the award when it was made without notice to it even by filing a Writ Petition under Art. 226 of the Constitution, apart from impleading itself as a party respondent in the acquisition proceedings or pending appeal or independently filing an appeal under s.54 of the Act. In view of this later development of law, we do not find that the conflict any longer subsists. Therefore, we hold that A.P.S.R.T.C. is a person interested within the meaning of s.3(d) of the Act and that, therefore, it is entitled to support the validity of the notification issued under s.4(1) of the Act when it is the subject matter of the challenge in the High Court. The High Court is, therefore, the right in its conclusion that the Corporation is not an interested party and the High Court has committed grievous error of law in refusing the Review Petition. But, however, that order is not before us.

It is next contended that there is a conflict operation of the orders in two cases regarding the same notification published under s.4(1) which was quashed at the instance of others and in this case the declaration alone has been quashed sustaining the notification under s.4(1). A reading to the Order of the Division Bench discloses that the entire notification under s.4(1) has been sustained. Only declaration under s.6 was quashed. It would be seen that Notification under s.4(1) was published on July 8, 1988 and subsistence was published on July 28, 1988, paper publication too was done. Immediately, the Writ Petitions were filed on August 26, 1988 and further proceedings were stayed by the High Court even before the declaration was published. Under these circumstances, the declaration under s.6 published on July 11, 1988 obviously was illegal. Accordingly, the declaration alone was rightly quashed. It is represented that after filing the Writ

A Petition, the Corporation had negotiated with the petition confining the need to acquire only 54 cents of land out of the petition's land. We do not express any opinion on this. It is open to the petitioner, if he so desires, to negotiate with the Corporation or with the Government and it is for the Government to take appropriate decision.

B The S.L.P. is accordingly dismissed with the above clarification.

T.N.A.

Petition dismissed.