

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3380 OF 2003

Jabalpur Development Authority

..... Appellant

Versus

V.V. Shrivastava and another

..... Respondents

JUDGMENT

G.S. Singhvi, J.

1. Whether Town Planning Scheme No. 14 (hereinafter described as 'the Scheme') framed by appellant – Jabalpur Development Authority could not be implemented in respect of the land of the respondents due to the alleged non-compliance of Sections 50 and 56 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short, 'the Act') is the question which arises for consideration in this appeal filed against order dated 17.8.2001 by which learned Single Judge of the Madhya Pradesh High Court dismissed in

limine the second appeal preferred by the appellant against judgment and decree dated 21.4.1999 passed by IX Additional District Judge, Jabalpur (hereinafter referred to as, 'the lower appellate Court') in Civil Appeal No. 36-A of 1998 whereby the decree passed by 15th Civil Judge Grade II, Jabalpur (hereinafter referred to as, 'the trial Court') in a suit for declaration and injunction was upheld.

2. The appellant is a body corporate constituted under Section 38 of the Act. In May 1980, the appellant decided to prepare the Scheme covering an area of 104.25 hectares including the land of the respondents comprised in khasra No. 164/2 for construction of Bus Terminus, Major Road No.4, Housing Scheme and Sites for offices of the State, Central Governments and Public Corporations. As a follow up, notification dated 4.7.1980 was issued under Section 50(2) of the Act whereby the appellant declared its intention to prepare the Scheme. The draft scheme was published in the Madhya Pradesh Gazette dated 19.6.1981 issued under Section 50(3) and objections and suggestions were invited from the public. The Scheme was approved by the appellant on 14.9.1982 and notification dated 29.4.1983 (Ex.D1) was published under Section 50(7).

3. As a sequel to publication of the Scheme, the appellant issued notice dated 26.8.1983 to respondent No.1 and called upon him to submit claim for compensation in lieu of acquisition of khasra No.164/2. Another letter dated 31.10.1983 was sent to respondent No.1 and he was asked to submit some documents necessary for determination of the amount of compensation. Similar notices were issued to other land owners, majority of whom agreed to accept the amount of compensation offered by the appellant. It is not in dispute that after acquiring the major portion of the land by agreement several multistoried buildings have been constructed and a housing colony has also been developed.

4. Since the respondents did not reply to either of the communications sent by the appellant, the State Government was requested to acquire the land under the Land Acquisition Act, 1894.

5. After almost 9 years of the publication of notification under Section 50(7) of the Act, the respondents filed suit for declaration and permanent injunction by alleging that the predecessor of the defendant (appellant herein), namely, Town Improvement Trust, Jabalpur had made an attempt to acquire their land in 1977 by issuing notification under Section 48 of the

Madhya Pradesh Town Improvement Trust Act, 1960 but after filing of objections, no further action was taken; that the Scheme has not been framed/published in accordance with the provisions of the Act; that there was no legal basis or justification to acquire their land and the same will be deemed to have lapsed because the land was not acquired within three years from the date of publication of notification Ex.D1.

6. The trial Court vide its judgment dated 17.11.1997 decreed the suit primarily on the ground that the defendant (appellant herein) has failed to prove that the draft scheme was published under Section 50(3) and was approved under Section 50(4). The trial Court took cognizance of notification – Ex.D1 and observed that even if compliance of various sub-sections of Section 50 is presumed, the Scheme will be deemed to have lapsed because the same was not implemented within three years from the date of its final publication.

7. The appeal preferred by the appellant was dismissed by the lower appellate Court which expressed its agreement with the trial Court that the Scheme had not been published as per the mandate of Section 50 and, in any case, the same will be deemed to have lapsed because the land was not

acquired within three years of the publication of notification under Section 50(7).

8. The appellant challenged the judgment of the lower appellate Court by filing an appeal under Section 100 of the Code of Civil Procedure (CPC). It also filed an application under Order 41 Rule 27 CPC for placing on record documents marked 'A' to 'H' to show that the Scheme has already been implemented. A reading of the impugned order shows that the learned Single Judge took cognizance of the statement made by the counsel appearing on behalf of the appellant that land of the respondents has not been acquired in accordance with law and held that the Courts below had rightly restrained the appellant from interfering with their possession without following due process of law. The learned Single Judge further held that Ex.D1 cannot be treated as publication of final Scheme as per the requirement of Section 50(7) of the Act. The learned Single Judge also observed that the documents produced along with the application filed under Order 41 Rule 27 CPC do not prove publication of notifications under Section 50(2) and 50(7) of the Act, which are mandatory in character.

9. Along with the special leave petition out of which the present appeal arises, the appellant filed I.A. No.2/2001 for placing on record copies of notification dated 4.7.1980 (Annexure-P6) issued under Section 50(2), notification dated 19.6.1981 (Annexure-P7) by which the draft scheme was published under Section 50(3), notice dated 26.8.1983 (Annexure-P8) by which respondent No.1 was asked to submit his claim for compensation and letter dated 31.10.1983 (Annexure-P9) by which he was called upon to submit true copy of sale deed, khasra panchshal duly certified by Tehsildar, diversion certificate etc., partition deed and khasra plan of the land.

10. We have heard learned counsel for the parties and perused the record.

11. In response to the notice of the special leave petition issued on 7.12.2001, the respondents filed detailed counter affidavit dated 17.3.2002 along with copy of the plaint and statement of DW-1 Kedar Prasad Sharma, who was then working as Section In-Charge in the establishment of the appellant. The appellant filed rejoinder affidavit dated 10.4.2002 along with copy of the written statement. An additional counter affidavit dated 21.9.2002 was filed by respondent No.1 to which supplementary affidavit dated 27.10.2002 was filed on behalf of the appellant. The respondents then

filed application dated 15.1.2003 for placing on record additional documents to which counter affidavit was filed by the appellant on 14.2.2003. After grant of leave, the respondents filed application dated 12.6.2009 for placing on record copies of minutes of the meeting of the appellant held on 10.11.1993 (Annexure-R7), letter dated 16.5.2005 (Annexure-R8) sent by Joint Director, Nagar Tatha Gram Nivesh, Jabalpur to the Chief Executive Officer of the appellant, letter dated 16.12.2005 (Annexure-R9) sent by the Land Acquisition Officer to Shri Brij Bihari Nagaria, general power of attorney holder for Shri Najuk Jain, Shri Jambo Jain and Shri Jagat Jain, letter dated 26.12.1994 sent by the State Government to Commissioner, Jabalpur Division and Chairman of the appellant and details of the Scheme framed under the Act (Annexure-R9). Lastly, I.A. No. 11/2009 was filed on behalf of the appellant for filing additional affidavit of Shri G.N. Singh, Land Acquisition Collector along with letter dated 25.7.2007 sent by the State Government to the Chief Executive Officer of the appellant.

12. We have made a mention of these pleadings and documents to show that after the judgment of the trial Court, the lower appellate Court and the High Court, the parties have exchanged correspondence and apparently conflicting communications have been issued by the functionaries of the

Government and the appellant. However, it is not necessary to consider additional pleadings and documents because we are convicted that the High Court committed an error by not entertaining the application filed by the appellant under Order 41 Rule 27 CPC for producing additional evidence to show that the possession of the major portion of the land covered by the Scheme was taken after paying compensation to the land owners and the Scheme has been implemented.

13. We are also of the view that the Courts below have gravely erred in holding that Ex.D1 dated 29.4.1983 is a notification issued under Section 50(4) and the final Scheme was not published as per the requirement of Section 50(7). A perusal of Ex.D1, copy of which has been placed on the record of this appeal as Annexure-P2 shows that this is the notification by which the final scheme was published in Madhya Pradesh Gazette dated 29.4.1983. Reference to Section 50(4) has been made in this notification to signify that the Scheme was approved by the appellant. All the Courts have misinterpreted this notification as a notification issued under Section 50(4). That apart, a conjoint reading of the notifications – Annexures-P6 dated 4.7.1980, P7 dated 19.6.1981 and P2 dated 29.4.1983 makes it clear that the

Scheme was finalized after complying with the mandate of various sub-sections of Section 50 of the Act.

14. In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted to the High Court with the direction that the second appeal filed by the appellant be decided afresh after giving opportunity of hearing to the parties. The parties may, if so advised, file applications under Order 41 Rule 27 CPC for permission to adduce additional evidence. The High Court shall first dispose of the application already filed by the appellant along with the second appeal and the applications which may be filed hereafter by either party. Thereafter, the High Court shall frame substantial questions of law as per the mandate of Section 100 CPC and decide the appeal with reference to those questions of law.

.....J.
[G.S. Singhvi]

.....J.
[Asok Kumar Ganguly]

New Delhi,
October 19, 2010.