Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2934 OF 2010
[Arising out of SLP (C) No.31132 of 2008]

Mysore Urban Development Authority by its Commissioner … Appellant

Vs.

Veer Kumar Jain & ORS. … Respondents

O R D E R

R. V. Raveendran J.,

Leave granted. Heard the parties.

2. On 15.3.1990, a preliminary Notification under section 17 of the Karnataka Urban Development Authorities Act, 1987 ('KUDA Act' for short) was issued by the Mysore Urban Development Authority - the appellant herein ('MUDA' for short), proposing to acquire certain lands for development of Kuvempunagar residential layout and formation of a double Road. This was followed by a final declaration dated 24.5.1991 under Section 19(1) of the KUDA Act by the state government stating that it had

granted sanction of the scheme and that the land proposed to be acquired by MUDA for the purposes of the scheme is required for a public purpose. The said final declaration was challenged and quashed by the High Court with liberty to proceed afresh from the stage of consideration of representations. After considering the representations, a fresh final declaration was issued on 4.10.1999. In pursuance of it, an Award was made on 16.10.2000 and possession of the lands was taken on 8th/9th December 2000. A notification dated 14.12.2000 was issued under section 16(2) of the Land Acquisition Act, 1894 ('LA Act' for short) confirming that possession of the lands had been taken over. In view of the above, MUDA claims that the acquired lands vested in the government and later in MUDA.

3. Acting on the applications of some land owners, the state government issued a notification dated 15.9.2001 under section 19(7) of the KUDA Act read with section 48(1) of LA Act dropping the acquisition proceedings, in regard to 17 acres 21 guntas of the lands described therein. Immediately thereafter, on 28.9.2001, the land owners sold the de-notified lands to the first respondent. When MUDA came to know about the de-notification, it represented to the government that the lands could not have been de-notified as the lands had vested in it, on possession being taken. It was also

submitted that the acquired lands could not be de-notified without hearing it. In view of it, the state government issued another notification dated 22.7.2002 under section 21 of the Karnataka General Clauses Act, withdrawing the notification dated 15.9.2001.

4. In this background, the first respondent, purchaser of the de-notified lands from the previous land owners filed a writ petition (WP No.30425/2002) before the Karnataka High Court, challenging the notification dated 22.7.2002 on the ground that the owners of the lands were not heard before withdrawing the notification dated 15.9.2001. It was also contended that once a notification was issued under section 48(1) of LA Act, it could not be withdrawn under any circumstances and Section 21 of General Clauses Act does not empower such withdrawal. A learned Single Judge, by judgment dated 28.8.2007, allowed the writ petition filed by the first respondent. He held that when a notification under section 48(1) is issued, a valuable right relating to property was acquired by the land owner in regard to the de-notified land, and therefore, a notification under Section 48(1) of LA Act cannot be withdrawn without hearing the concerned land owner. The learned Single Judge therefore quashing the cancellation notification dated 22.7.2002, but reserved liberty to the state government to

consider the request of MUDA to withdraw the notification dated 15.9.2001, after hearing the then land owners and their transferee (the first respondent). Feeling aggrieved, MUDA filed a writ appeal which was dismissed by a Division Bench of the High Court on 14.12.2007. The said order is under challenge in this appeal by special leave.

5. The question for consideration is whether the order of withdrawal dated 22.7.2002 is valid; and what would be the appropriate relief on the facts and circumstances.

6. We may refer to the relevant provisions of the KUDA Act before dealing with the contentions. Sub-section (1) to (3) of Section 17 provides for issue of a preliminary notification in regard to proposed acquisition and Section 19(1) to (3) relate to issue of a final declaration. Section 36 deals with provisions applicable to acquisition of land otherwise than by agreement and is extracted below :

> "36. Provisions applicable to the acquisition of land other-wise than by agreement.- (1) The Acquisition of land under this Act otherwise than by agreement within or without the urban area shall be regulated by the provisions, so far as they are applicable, of the Land Acquisition Act, 1894.
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> (2) For the purpose of sub-section (2) of section 50 of the Land Acquisition Act, 1894, the Authority shall be deemed to be the local authority concerned.

> (3) After the land vests in the Government under section 16 of the Land Acquisition Act, 1894, the Deputy Commissioner shall, upon payment of the cost of the acquisition, and upon the Authority agreeing to pay any further cost which may be incurred on account of the acquisition, transfer the land to the Authority, and the land shall thereupon vest in the Authority".

We may also refer to the relevant portions of Section 16 of LA Act (as amended in Karnataka) and section 48 of LA Act :

> "16. Power to take possession: (1) When the Dy. Commissioner has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.
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> (2) The fact of such taking possession may be notified by Deputy Commissioner in the Official Gazette; and such notification shall be evidence of such fact".
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> "48. Completion of acquisition not compulsory, but compensation to be awarded when not completed – (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken". x x x x x

7. The appellant urged the following contentions:

(i) Section 16(1) of the LA Act provides that when the Deputy Commissioner takes possession of the land after making an award it shall vest absolutely in the government free from encumbrances. Sub-section (2) of section 16 provides that publication of a notification confirming the fact of taking of possession shall be evidence of such fact. In this case, the Deputy Commissioner took possession of the acquired lands, and thereafter,

a notification under section 16(2) of the LA Act was issued on 9.12.2000 and that the said notification is evidence of the fact of taking possession. Once the possession is taken, the state government had no power or authority to issue a notification under section 48(1) of the LA Act and therefore, the order dated 15.9.2001 is void and *non est* and reviving such a notification would amount to perpetuation of illegality.

(ii) MUDA, the acquiring authority, for whose benefit the land was acquired, was not heard before issuing the notification dated 15.9.2001 under section 48(1) of the LA Act. The said notification was therefore rightly withdrawn by a notification dated 22.7.2002. If the notification dated 22.7.2002 is quashed, it would bring back to life, the notification dated 15.9.2001 issued under Section 48(1) of LA Act which was *per se* illegal and void, and that is impermissible.

(iii) Where the government, after issuing an order, finds that it is inherently defective or void, it can withdraw the same and then reconsider the issue as per law, and in such a situation, the question of violation of principles of natural justice would not arise.

8. On the other hand, the first respondent submitted that a notification withdrawing an earlier notification under section 48 (dated 22.7.2002) could not have been issued without hearing the land owners in whose favour a right in property had accrued by issue of a notification under Section 48(1) of LA Act.

9. We may first refer to the relevant principles in regard to withdrawal from acquisition under Section 48(1) of the LA Act :

(i) Sub-Section (1) of section 48 clearly provides that the Government will have liberty to withdraw from the acquisition of any land, *of which possession has not been taken*. Therefore, the power under Section 48(1) of the LA Act could only be exercised before the possession of the acquired lands is taken. Once possession of the land is taken by the government, the land vests in the government and the power of the government under Section 48(1) of the LA Act to withdraw acquisition in regard to such land would cease to exist.

(ii) Where possession of the acquired land has not been taken, the power and discretion under Section 48(1) of the LA Act can be exercised by the state government, but only in a fair and non-arbitrary manner. Consequently, no order under Section 48(1) of the LA Act can be passed by the government, without hearing the local authority for whose benefit the acquisition is made, particularly when the preliminary notification has been issued by such local authority, and the final declaration states that the lands are acquired for such authority for a public purpose. (Vide: *Amarnath Ashram Trust Society v. Government of UP* - 1998 (1) SCC 591, *Larsen & Toubro Ltd. v. State of Gujarat* - 1998 (4) SCC 387 and *State Government Houseless Harijan Employees Association vs. State of Karnataka* - 2001 (1) SCC 610).

10. There is no dispute that the land owners were not heard before issuing the cancellation notification dated 22.7.2002. Therefore, the order dated 22.7.2002 is illegal being opposed to principles of natural justice. In such a case, usually the cancellation of de-notification, being opposed to principles of natural justice, would be set aside and the Government would be directed to reconsider the matter after giving due opportunity to the affected parties (land owners whose lands were withdrawn from acquisition) to have their say in the matter. But then we face a dilemma. If the order dated 22.7.2002 is quashed as being violative of the principles of natural justice, it will result in the revival of the order dated 15.9.2001 which also suffers from the same vice, as that was also made in violation of the principles of natural justice, without hearing the affected party, that is, MUDA.

11. The learned counsel for the first respondent contends that while he challenged the order dated 22.7.2002, MUDA did not challenge the order dated 15.9.2001 and therefore the validity of the order dated 22.7.2002 alone arises for consideration and not the validity of the order dated 15.9.2001. This contention is not tenable because of two reasons. Firstly, MUDA in fact protested against the order dated 15.9.2001, before the state government and

the state government accepted the contentions of MUDA and withdrew the order dated 15.9.2001. As the state government granted it the relief, there was no need or occasion for MUDA to challenge the order dated 15.9.2001 in a court of law. Secondly as of now, the order dated 15.9.2001 is not in existence. Incidental to the question whether the order dated 22.7.2002 should be quashed, it is necessary to decide whether this court should by so quashing, revive an order dated 15.9.2001 which also suffers from the same vice of being in violation of principles of natural justice, or should quash that order also.

12. We are of the view that the order dated 22.7.2002 is inextricably linked with the validity of the order dated 15.9.2001 which was withdrawn by the order dated 22.7.2002. The principles that is pressed into service by the first respondent to challenge the order dated 22.7.2002 is available with equal force to hold that the order dated 15.9.1991 is also void. In fact the very argument which is urged by the first respondent in the writ petition to challenge the order dated 22.7.2002, was urged by MUDA before the Government, in addition to pointing out the inherent illegality of the order dated 15.9.2001, to withdraw the notification dated 15.9.2001. Accepting the said contentions and finding that the order dated 15.9.2001 was liable to be

set aside as being in violation of principle of natural justice, the state government withdrew the notification dated 15.9.2001. It is another matter that in so doing, it did not hear the affected party namely the land owner. If the first respondent should succeed because the land owner was not heard before issuing the notification dated 22.7.2002, on the same reasoning the notification dated 15.9.2001 should also be quashed as the same could not have been issued without hearing the MUDA.

13. We may refer to some of the decisions of this court having a bearing on the issue. In *S.L. Kapoor v. Jagmohan and Ors*. [1980 (4) SCC 379] this court rather rigidly and sternly observed:-

> "In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced."

In *State Bank of Patiala v. S.K. Sharma* [1996 (3) SCC 364] this court stated that the aforesaid observation should be understood in the context of the facts of that case and in the light of the subsequent Constitution Bench judgment in *Managing Director, ECIL, Hyderabad vs. B. Karunakar* [1993 (4) SCC 727] and *C.B. Gautam v. Union of India* [1993 (1) SCC 78].

This Court observed:-

> "The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in *Russell v. Duke of Norfolk* – 1949 (1) All ER 109, way back in 1949, these principles cannot be put in a straight-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See *Mahender Singh Gill v. Chief Election Commissioner* – 1978 (1) SCC 405*)*. The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected.
>
> While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arises before them."

Ensuring that there is no failure of justice is as important as ensuring that there is a fair hearing before an adverse order is made. This Court in *Roshan Deen v. Preeti Lal* - 2002 (1) SCC 100; this court held:

> "Time and again this Court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it. (vide *State of Uttar Pradesh vs. District Judge, Unnao & Ors.* (1984) 2 SCC 673). The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the byproduct of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

14. We have already noticed above that the order dated 22.7.2002 is inextricably linked to order dated 15.9.2001 which was invalid for the same

reasons as the order dated 22.7.2002. Further, the order dated 22.7.2002 was passed to set right the violation of principles of natural justice in making the order dated 15.9.2001. It is possible for us to hold that the order dated 22.7.2002 did not call for interference in exercise of power of judicial review, as it merely cancelled an earlier invalid order which was made without hearing MUDA. But that may prejudice the landowners as they would have no forum to put forth their request for de-notification. We are of the view that the relief should be moulded appropriately so that the landowners should also have an opportunity to put forth their grievance. Interests of justice would be served if both the notifications dated 22.7.2002 and 15.9.2001 are set aside and the state government is directed to consider the request of the land owners for withdrawal from acquisition afresh after giving due hearing to the land owners (and also the first respondent) and MUDA and then decide the matter in accordance with law.

15. In view of the above, we allow this appeal and modify the orders of the High Court. Both the notifications dated 22.7.2002 and 15.9.2001 are quashed and the state government is directed to hear the request of the landowners for de-notification afresh. It will be open to the landowners to place such material as is available to them to show that the possession was

not taken in regard to lands in question, and thereby rebut the presumption raised in view of Section 16(2) of LA Act; and then establish that circumstances warrant de-notification. On the other hand, it will be also open to MUDA also to establish that possession was in fact taken and that power under section 48(1) could not therefore be exercised. The state government shall hear both the parties and pass appropriate orders in accordance with law within four months. Status quo will be maintained in regard to lands in question by the parties till then.

_____J.
(R.V. RAVEENDRAN)

_____J.
(R.M. LODHA)

New Delhi;
April 1, 2010.