

HIGH COURT OF MADHYA PRADESH: JABALPUR
(Division Bench)

W.A. No. 474/2017

Arvind Kumar Jain and others **Appellants**

- V/s -

State of M.P. & Others **Respondents**

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice

Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Present:

Shri R.P. Agarwal, Senior Advocate with Shri Sanjay Agarwal and Shri Ekansh Dhingra, Advocates for the appellants.

Shri V. S. Shrotri, Senior Advocate with Shri Saurabh Soni, Advocate for the respondents.

Shri A. P. Singh, Govt. Advocate for the respondents/State.

Whether Approved for Reporting : Yes

Law Laid Down: Once Notification in terms of Section 71(1) of the M.P. Town Improvement Trust Act, 1960 for acquisition of a land is published, the land vests with the Trust. As owner, the Trust is free to utilize it for the purpose it deems appropriate. Challenge on the ground of change of use of land from original purpose of the scheme; compensation having not been paid and there being no provision for proceeding for determination of compensation, is devoid of merit. Whereas, the Act stands repealed vide M.P. Nagar Sudhar Nyas (Nirsan) Adhiniyam, 1994 w.e.f. 1.8.1994 and in view of proviso to Rule 3 of the Repealing Act, the proceedings pending immediately before appointed day, before the Tribunal constituted u/s 73 of Repealed Act shall continue as if it were a reference made to the Court u/s 18 of the Land Acquisition Act, 1894. Judgment of the Supreme Court in **Mohan Singh Gill and others v. State of Punjab and others** (2015) 8 SCC 345 is distinguished on facts.

Significant Paragraph Nos.: 9, 11, 12, 13 and 15.

J U D G M E N T (Oral)

(05-07-2017)

Per : Hemant Gupta, Chief Justice:

The challenge in the present appeal is to an order passed by the learned Single Bench on 17.2.2017 whereby the writ petition challenging

an order dated 4.3.2006 Annexure P/14 to declare the scheme as having been lapsed and abandoned was dismissed but with a direction to the respondents to determine and pay the adequate amount of compensation within 90 days from the date of communication of the copy of the order.

2. On 11th March, 1983, a notification Annexure P/1 was published in respect of acquisition of land measuring 36.60 hectares in terms of Section 71(1) of the M.P. Town Improvement Trust Act, 1960 (for short 'the Act'). The scheme was in two phases. The first phase of the scheme was in respect of 35.56 hectares of land whereas, phase II was in respect of 55.03 acres of the land. The land of the appellants fall in phase II of the scheme of the land said to be acquired in terms of Section 71 of the Act.

3. The grievance of the appellants is that most of the land comprising in phase II has extensive constructions which hampered the development of land for the purpose of scheme and therefore, a letter was written by the Improvement Trust to the State Government to modify the said scheme to reduce the same to 23.67 hectares. Such communication has been appended with the writ petition as Annexure P/8. Admittedly, such recommendation was not accepted by the State Government as is required in terms of Section 50 of the Act to modify the scheme.

Later, the appellants requested for permission to construct Jain Temple on the land which once form part of the scheme. Such request

was declined on 4th March, 2006 vide Annexure P/14. The challenge to the said order remains unsuccessful before the learned Single Bench.

4. Before this Court, the argument of learned counsel for the appellants is that since the scheme as framed is incapable of execution, therefore, the same is either deemed to be lapsed or abandoned. Therefore, the land owned by the appellants cannot be utilized for the purpose of scheme. It is contended that land is not being utilized for the purpose of scheme but for selling plots on profit. Therefore, such action of sale of plots is not permissible. The reliance is placed upon Supreme Court judgment reported as (2015) 8 SCC 345 (*Mohan Singh Gill and Others vs. State of Punjab and others*), wherein, it has been held that the purpose of acquisition cannot be changed.

5. It is also contended that the appellants have not been paid compensation whereas, the Act stands repealed vide Madhya Pradesh Nagar Sudhar Nyas (Nirsan) Adhiniyam, 1994, w.e.f. 1.8.1994 (for short “the Repeal Act”). There is a provision of continuation of proceeding pending before the Tribunal before the appointed day but there is no provision for institution of fresh proceeding. Therefore, by necessary implication in the absence of payment of compensation, the land cannot be utilized for the purpose of Trust.

6. We have heard learned counsel for the appellants and find no merit in the present appeal.

7. Before we consider the respective arguments of the appellants, certain statutory provisions need to be extracted:-

“50. Abandonment of Improvement Scheme or application to State Government to sanction it. - (1) After the expiry of the periods respectively prescribed under clause (a) of sub section (2) of Section 46, by Section 47, and by clause (b) of sub section (2) of Section 48, in respect of any improvement scheme, the Trust shall consider any objection, representation or statement of dissent received thereunder, and after giving reasonable opportunity of being heard to all persons making any objection, representation or dissent, who may desire to be heard, the Trust may either abandon the scheme or apply to the State Government to sanction the scheme with such modification, if any, as the Trust may consider necessary.

71. Notification of acquisition and vesting of land in Trust – (1) After the acquisition of land is sanctioned by the State Government under Section 70 the Trust may acquire such land by publishing in the Gazette a notice stating that it had decided to acquire the land and has obtained the sanction of the State Government for the acquisition thereof.

(2) When a notice under sub-section (1) is published in the Gazette the land shall, on and from the date of such publication, vest absolutely in the Trust free from all encumbrance.

72. Compensation for compulsory acquisition of land- (1) Where any land is acquired by the Trust under this Act, the Trust shall pay for such acquisition, compensation the amount of which shall be determined in accordance with provisions hereinafter contained.

(2) Where the amount of compensation in respect of any land can be determined by agreement between the Trust and the person or persons interested therein, it shall be determined in accordance with such agreement which shall be in writing.

(3) Where no such agreement can be reached, the Trust shall refer the case to the Tribunal for determination of the amount of compensation as also the person or persons to whom such compensation shall be paid.

73. Constitution of Tribunal – (1) A Tribunal shall be constituted as provided hereinafter in this section for the purpose of determining the amount of compensation to be paid for acquisition of land for the purposes of this Act as also the person or persons to whom such compensation shall be paid.

(2) The Tribunal shall consist of a President and two assessors.

***”

8. A perusal of the above provision shows that the land, on publication of a notification under Section 71 (1) of the Act, vest in the Trust absolutely free from all encumbrance. The compensation is to be paid as per the agreement, if any such agreement is reached or by reference to the Tribunal who shall settle the amount of compensation or the person to whom such compensation shall be paid. Therefore, once a notification dated 11th March, 1983 has been published, the land owned by the appellants vest absolutely free from all encumbrance with the Trust.

9. The argument that the Trust is utilizing the land by sale of plots diverting from original purpose of the scheme is again not tenable. Once the land vests free from all encumbrance with the Trust, the Trust can utilize for any other purpose. As the owner, the Trust is free to utilize the land for the purpose, which it deems appropriate. Reference shall be made to the decisions of the Supreme Court reported as (2003) 1 SCC 335 (**Northern Indian Glass Industries v. Jaswant Singh and others**) and

(2005) 1 SCC 558 (**Govt. of A.P. and another v. Syed Akbar**).

Therefore, mere fact that the land is being used for carving out of residential plots cannot be said to be illegal as Trust is competent to use for any purpose.

10. In **Northern Indian Glass Industries (supra)** while examining the provisions of Land Acquisition Act, 1894, it was held that after passing the award and taking possession of the land under Section 16 of the said Act, the land vests with the Government free from all encumbrances. Therefore, even if the land is not used for the purpose for which it is acquired, the land owner does not get any right to ask for re-vesting of land to him and to ask for its restitution. The said principle was reiterated by the Supreme Court in **Syed Akbar's case (supra)** and it was held as under:

“11. In that case, an extent of 1.94 acres of land was acquired in 1952 for construction of National Highway and the construction was completed in 1955 in 80 cents of land and the balance of land remained unused. The remaining land was sought to be sold to the land owner at the same rate at which the compensation was awarded under Section 11. This again was challenged in the writ petitions. The Government tried to sustain the action on the basis of the executive order issued by the Government for permission for alienation of the land. On these facts, the position of law was made clear in para 4 extracted above. Thus, it is clear that under Section 16 of the Land Acquisition Act, the acquired land should vest in the State free from all encumbrances and that *any executive order inconsistent with the provisions of the Land Acquisition Act was invalid*. Further that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used

for any other public purpose. In our view, this decision supports the case of the appellants fully.

12. In the case *Chandragauda Ramgonda Patil and Another v. State of Maharashtra and others* (1996) 6 SCC 405, claim of the petitioner for restitution of the possession of the land acquired pursuant to the resolution of the State Government was rejected. In para 2, this Court observed thus: (SCC p. 406)

"2. We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken away back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the writ petitions. It is axiomatic that the land acquired for a public purpose would be utilized for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilized, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions."

14. From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order."

11. Thus, the judgment of the Supreme Court rendered in **Mohan Singh Gill (supra)** referred to by the learned counsel for the appellants is not applicable to the facts of the present case inasmuch as in the reported

judgment, the land was acquired for missing link of a road but apart from providing for road, additional land was acquired intending to use the same for commercial purposes without giving any such indication in the Notification under Section 4 of the Land Acquisition Act. It was, in these circumstances, the Court held that since from the very beginning the land was intended for commercial purposes but without declaring the same in the Notification, that part of the Notification is not legally tenable. The relevant extract from the said judgment, reads as under:-

“30. Mr. Khanna had cited certain judgments in support of his submission that even if the land is acquired for one particular purpose, the authorities are empowered to utilise the same for another public purpose. However, it is permissible in those circumstances where the original purpose for which the land was acquired had to be changed for some valid reasons. Even that is not the case herein. From the very beginning, the authorities had in mind to use the extra chunk of land for commercial purpose but the same was not even stated in the Notifications issued under Sections 4 or 6 of the Act. It is stated at the cost of the repetition that insofar as Notifications are concerned, purpose mentioned is construction of Missing Link-II, and in this scenario, the authorities cannot acquire more land than what is required for construction of Missing Link-II. The Notifications to the extent they acquire land over and above which is needed for construction of Missing Link-II are, thus, held to be bad in law and set aside.”

12. Admittedly, no proceedings were initiated for determination of amount of compensation by an agreement in terms of sub-section (2) of Section 72 of the Act. It is on failure to arrive at an agreement, the matter was required to be referred to the Tribunal for determination of the amount of compensation but the fact remains that neither proceeding

were initiated for determining the compensation by an agreement or by Tribunal. In the meantime, the Act itself has been repealed. The provision from the Repealing Act read as under:-

“3. Repeal and Savings :- (1) On the appointed day the Madhya Pradesh Town Improvement Trusts Act, 1960 (No. 14 of 1961) shall stand repealed and all the Town Improvement Trusts shall stand dissolved.

(2) All assets and liabilities of the Town Improvement Trusts on the appointed day shall stand vested in the Municipality in that area and such Municipality shall have all powers necessary to take possession of, recover and deal with such assets and discharge such liabilities.

(3) Any proceedings pending immediately before the appointed day to which the Town improvement Trust was a party shall be continued as if the Municipality was a party thereof in lieu of the Town Improvement Trust:

Provided that the proceedings pending immediately before the appointed day, before the Tribunal constituted under Section 73 of the repealed Act shall continued and disposed by the Court of District Judge of the concerned District, where the acquired land is situated as if it is a reference made to that Court under Section 18 of the Land Acquisition Act, 1894 (1 of 1894).”

13. A reading of Section 3 of the Repealing Act shows that proceeding pending before the appointed day i.e. 1.8.94 was to continue as if Municipality was a party. Such provision was incorporated in view of the fact that all assets and liability of the Town Improvement Trust vested in the Municipality. The proviso contemplated that if any proceedings are pending before the Tribunal that shall continue but if the proceeding is filed after the repealed Act, it shall be disposed of by the Court of District Judge of the concerned District as if it is a reference made to that Court

under Section 18 of the Land Acquisition Act, 1894. Thus, the proceedings which are pending were referred for adjudication to the District Judge.

14. The arguments of learned counsel for the appellants is that since there is no provision for proceeding for determination of compensation, which have not been initiated by a land owner, therefore, the acquisition itself in respect of such land has lapsed as there cannot be any acquisition without payment of compensation.

15. We do not find any merit in the said argument. There cannot be any dispute with regard to the proposition that acquisition without payment of compensation is not tenable. However, the fact is that the scheme of the Act is that the payment of compensation has to be determined by the Tribunal, if no agreement is arrived at. Learned Single Judge has recorded a finding that no Tribunal was constituted and in the absence of constitution of Tribunal, the learned Single Bench directed for payment of compensation within 90 days to settle the dues. The appellants have not raised even a little finger for all these years that the compensation has not been paid. Still at this stage, the amount of compensation can be determined to settle the equities between the parties. However, we find that compensation is a process of adjudication which is required to be arrived at by some Authority. Intention of Legislature while incorporating sub-section (3) of Section 3 of the 1994 Act was that the Court of District Judge shall determine the amount of compensation in

terms of Section 18 of the Land Acquisition Act, 1894. Therefore, even if, the proviso does not contemplate initiation of fresh proceeding for determination of compensation and such provision being beneficial to the land owner, we deem it appropriate to permit the appellants to invoke the jurisdiction of filing proceeding before the District Judge of concerned District for determination of compensation in terms of Section 18 of the Land Acquisition Act provided such an application is filed within 90 days from today. Apart from such modification, we find no merit in the present appeal.

16. Appeal stands dismissed.

**(HEMANT GUPTA)
CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)
JUDGE**