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Court : Allahabad

Decided On : Mar-17-1975

Reported in : AIR1975All450

Judge : G.C. Mathur and ;G.D. Parekh, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 3 and 44A

Appeal No. : Special Appeal Nos. 61 and 81 of 1975

Appellant : The State of U.P. and ors.

Respondent : Saeed Ahmad and Co. and ors.

Advocate for Def. : Bashir Ahmad, ;B.N. Sapru and ;S.D. Agrawal, Advs.

Advocate for Pet/Ap. : Standing Counsel

Disposition : Appeals dismissed

Judgement :

G.C. Mathur, J.

1. These are two appeals by the State Government against two judgments of a learned Single Judge, allowing two writ petitions. Since the point involved in the two cases is the same, it is convenient to dispose them of by a common judgment.

2. An agreement dated October 11, 1905, was entered into by the Government of the United Provinces of Agra and Oudh and the firm of Martin and Co. Under this agreement, provisions were made for the grant of a concession of the right to construct and work what has subsequently come to be known as Shahdara-Saharanpur Light Railway. Under one of the terms of the agreement, the Government agreed to provide free of charge sufficient land for purposes of the Railway. It appears that land was acquired by the Government and was handed over to the Railway. Ever since this Light Railway has been operating between Shah-dara (Delhi) and Saharanpur, Though, in the beginning, Shahdara was a part of the United Provinces, later it was included in Delhi.

3. By a special resolution dated December 10, 1970, the S.S. Light Railway Co. decided to go into voluntary liquidation and a voluntary liquidator was appointed. On March 18, 1971, an agreement was entered into between the Company and one Sri Bishambhar Dayal of Delhi for the sale of the assets of the Company. By another agreement dated September 25, 1971, the Railway Company entered into an agreement with Messrs. Saeed Ahmad and Company, Saharanpur, for the sale of all the trees which stood on both sides of the railway track from Shahdara to Saharanpur. When these purchasers started removing the things which they had purchased, certain orders were passed by the State Government and its functionaries, stopping them from doing so thereupon Writ Petition No. 1676 of 1973 was filed by the S. S. Light Railway Company Limited, praying that the orders by which its purchasers were being prevented from removing the articles sold, be quashed. Writ Petition No. 1778 of 1973 was filed by Messrs. Saeed Ahmad and Company, praying that the orders of the State Government and of its functionaries, preventing this petitioner from cutting and removing the trees, be quashed Both the writ petitions were based on the assertion that the State Government had no concern with the land which had been given to the Railway and upon which the trees stood and where the other properties of the Railway were situated The State Government opposed both the writ petitions, mainly on the ground that, on the Company going into voluntary liquidation, the land reverted to it and it was the owner thereof. The Union of India which was made a party in Writ Petition No. 1778 of 1973, filed a counter-affidavit asserting that the land vested in it and not in the State Government. The learned Single Judge held that

the land vested in the Union of India and not in the State Government. He accordingly allowed both the writ petitions, quashed the offending orders and restrained the State Government and its functionaries from interfering with the purchasers from the Company in removing the articles purchased by them.

4. Against the judgment in Writ Petition No. 1778 of 1973, the State Government has filed Special Appeal No 61 of 1975. This relates to the trees sold by the Company to Messrs. Saeed Ahmad and Company. Against the judgment in Writ Petition No. 1676 of 1973, the State Government has filed Special Appeal No. 81 of 1975. This appeal is directed only against the orders of the learned Single Judge in respect of the trees sold by the Railway Company to Messrs. Saeed Ahmad and Company. In both these appeals, the only question, which arises for determination, is whether the land, which had originally been given to the Railway Company has now vested in the State Government.

5. Reliance was placed by the learned Standing Counsel on the agreement of October 11, 1905. Emphasis was laid on the fact that the agreement was entered into by the Government of the United Provinces and that the various clauses of this agreement referred to various controls which were to be exercised by the Government in respect of the Railway. Emphasis was particularly laid on Clause 11 of the agreement which provides for the sharing of excess profits between the Government and the company.

On the basis of the terms of the agreement, it was urged that, since the agreement was entered into by the Government of the United Provinces and since the Land was provided by the Government of the United Provinces, the land, after the Company has gone into liquidation, reverts to the Government of Uttar Pradesh which is the successor of the Government of the United Provinces. Let us examine this contention. The agreement was executed in the year 1905. At that time, there was unitary form of Govt. in India and there was no autonomy in the provinces. The agreement was executed under Section 43 of the [Land Acquisition Act, 1894](#). At that time, this section was in these words:--

'The provisions of Sections 39 to 42, both inclusive shall not apply, and the corresponding sections of the Land Acquisition Act, 1870, shall be deemed never

to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement between such Company and the Secretary of State for India in Council, the 'Government is, or was, bound to provide land.'

Section 43 contemplated an agreement between a Railway Company and the Secretary of State. The agreement in the present case, though entered into by the Government of the United Provinces, must be deemed to have been entered into on behalf of the Secretary of State for India in Council. It is in pursuance of this agreement that the Government acquired land and handed it over to the Railway Company. In acquiring the land and giving it to the Railway Company, the Government of the United Provinces was acting on behalf of the Secretary of State. The land so acquired vested in His Majesty Under Section 172 of the Government of India Act, 1935, all land, which vested in His Majesty for purposes of the Government of India and was situated in a province, vested in His Majesty for the purposes of the Federal Government if it had earlier vested in His Majesty for federal purposes. In other words, the land, which vested in His Majesty and was being used for purposes which, under the Act of 1935, became purposes of the Federation, vested in the Federal Government, even if it was situated in a province. We have then to see whether the Land, which was being used for purposes of the Railway Company, was being used for any purpose which was a purpose of the Federation under the 1935 Act. The S. S. Light Railway was running from Shahdara to Saharanpur, Shahdara, in 1935, being a part of Delhi, the Railway was operating in the territory of Delhi as well as in the territory of the United Provinces. Section 311 defines 'minor railway' to mean a railway which is situated wholly in one unit, unit meaning a Governor's province, a Chief Commissioner's Province or a Federated State. 'Federal Railway' is defined as including any railway not being a minor railway. The S.S. Light Railway was thus a federal railway. Federal railway was included in List I, the Federal Legislative List, at item No. 20 of the Seventh Schedule to the 1935 Act. It follows from this that the land, which was being used for purposes of a federal railway, was being used for a purpose which, under the 1935 Act, was a federal purpose. That being so, the land vested in His Majesty for purposes of the federation and not for purposes of the province. Article 294 of the Constitution provides that as from the commencement

of the Constitution all property and assets, which, immediately before such commencement, were vested in His Majesty for the purposes of the Government of the Dominion of India, shall vest in the Union of India. The land thus came to be vested in the Union of India.

6. The earlier actions of the Government of India and the Government of the United Provinces also indicate the same result. Some time in 1938 two questions arose between the Government of India and the Government of the United Provinces as to which Government was entitled to share the profits under the agreement dated October 11, 1905, and which Government was entitled to exercise the option of purchasing the Railway under that agreement. The Government of India, by a letter dated June 16, 1939, informed the Government of the United Provinces that all the rights and obligations of the Crown under that agreement, including the right to share the profits of the federal railway and to purchase the undertaking, devolved from April 1, 1937, on the Central Government by virtue of the Government of India Act, 1935. This Letter directed the Provincial Government to credit the share of profits received to the account of the Government of India.

7. Sometime in 1963 a dispute arose regarding the encroachment by the P.W.D. authorities of the Government of Uttar Pradesh over 9.937 acres of land of the Railway Company. A suggestion was made that this land be transferred to the State of Uttar Pradesh. Ultimately, the Government of India agreed to the transfer of the land to the State Government and by G.O. dated September 8, 1967, the State Government agreed to pay Rs. 47,200 as price for the transfer of the land which had been encroached upon.

8. The action of the two Governments in regard to the above mentioned two matters clearly shows that the land vested in the Union Government and not in the State Government. It may further be mentioned that, after the Union Government had filed its counter-affidavit, claiming that the land vested in it, the State Government was given an opportunity to controvert this counter-affidavit but it did not file any reply to it. In these circumstances, it is not possible to accept the claim of the State Government that the land in dispute vests in it. That being so, it can

lay no claim to the trees which are standing on this land. It had no right or jurisdiction to prevent the purchasers of the trees from the Railway Company from cutting and removing them.

9. The learned Standing Counsel referred to Section 62(f) of the Indian Easements Act and contended that the Railway Company had abandoned the land, and, therefore, it now vested in the State Government. In the first place, it is difficult to accept that the Railway Company has abandoned the land. In the second place, even if the Railway Company has abandoned the land, it vests in the Union of India and not in the State Government. Some reliance was also sought to be placed upon the provisions of Section 44A of the Land Acquisition Act. This section provides that no company, for which any land is acquired under this part, shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise, except with the previous sanction of the appropriate Government. This section, which was enacted in the year 1962, prohibits the transfer of land and not the sale of trees standing on it. Our attention was invited to Section 3(a) which provides that, in the Land Acquisition Act, unless there is something repugnant in the subject or context, the expression 'land' includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. Even if the trees standing on a land can be said, by virtue of this definition, to be included in the expression 'land', we have no doubt that the context of Section 44A rules out the use of this definition for interpreting the expression 'land' used in this section. The section was only intended to prevent a Company, for which land had been acquired under the Act, from transferring it. Apart from this, since the land vested in the Union of India, the State Government was not at all concerned with any violation of Section 44A.

10. For the reasons stated above, we find no merits in these appeals. They are accordingly dismissed with costs.

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