

Union of India and Another Vs. Krishnaswamy

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Court : Chennai

Decided On : Jan-18-1996

Reported in : AIR1996Mad238; 1996(1)CTC441

Judge : S.S. Subramani, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9 and 11; [Land Acquisition Act, 1894](#) - Sections 4(1), 6, 18 and 54; [Constitution of India](#) - Articles 136 and 226

Appeal No. : Second Appeal No. 1845 of 1982

Appellant : Union of India and Another

Respondent : Krishnaswamy

Advocate for Def. : R. Gopalakrishnan, Adv.

Advocate for Pet/Ap. : P. Krishnamoorthy, Govt. Pleader(Pondicherry)

Judgement :

1. The Second Appeal is by the defendants, namely, the Union of India represented by the Secretary to Government, Union Territory of Pondicherry and the Land Acquisition Officer, Pondicherry. The suit was filed by the respondent herein for a declaration that the Award passed by the defendants is invalid, and for permanent injunction restraining the defendants from interfering with his possession and enjoyment of the suit property.

2. It is said that Notification under Section 4(1) of the Land Acquisition Act was published on 14-11-1973. The respondent herein purchased [he property long after Section 4(1) of the Notification, i.e. in the year 1978. He wanted the Notification to be declared invalid for the reason that an erratum notification was issued by the defendants, defrauding the plaintiff. The plaintiff wanted a declaration to that effect and also prayed for an injunction to restrain the defendants from taking possession.

3. In the written statement filed by the defendants, they questioned the maintainability of the suit. They also contended that acquisition proceedings were taken property, and according to them, the plaintiff who is only a subsequent purchaser, is not competent to impeach the Notification.

4. The trial Court, after taking evidence, came to the conclusion that the suit is not maintainable. On merits, it further held that the acquisition was for a public purpose, and there is no ground made out to quash the Notification. The suit was, therefore, dismissed with costs.

5. When the plaintiff took the matter in Appeal as A. S. No. 159 of 1981, on the file of Additional District Judge, Pondicherry, the trial Court judgment was reversed. The lower appellate Court held that the suit is maintainable, and that the Government has acted with mala fides, and consequently, a decree was granted as prayed for by the plaintiff. It is against the said decision, the defendants have preferred this Second Appeal.

6. At the time when the Second Appeal was admitted, the following questions of law have been framed:--

'(1) Whether the lower Court was right in holding that the proceedings initiated under the Land Acquisition Act would be hit by vice of mala fides merely because of subsequent reduction of the area, sought to be acquired?

(2) Whether or not the proceeding and the decision thereon in W.P. No. 5814 of 1975 would constitute res judicata,

and

(3) Whether, on the facts and circumstances of the case, the Civil Court has jurisdiction to entertain the suit and grant relief as prayed for?'

7. According to me, the civil suit itself is not maintainable for the following reason.

8. A Division Bench of this Court has held in (1995) 2 MLW 166, Nagarajan K. R. v. The Special Deputy Collector, Land Acquisition, Works, Madras City, following the decision of the Supreme Court reported in 1995 (2) Scale 424 (SC) (Mir Fazeelath Hussain v. Special Dy. Collector, L. A. Hyderabad) as follows:--

'The Supreme Court had occasion to consider the rights of a person, who has purchased the property subsequent to the notification under Section 4(1) of the Act in Mir Fazeelath Hussain v. Special Deputy Collector, L. A. Hyderabad, : AIR 1995 SC1424 . The Court held that when the original owner did not choose to challenge the acquisition in spite of repeated notices, the person, who purchased the property subsequent to the notification under Section 4(1) of the Act cannot challenge the proceedings in acquisition. The above judgment will govern this case and put an end to the argument of the learned counsel for the petitioner.'

Further, the present suit is also barred. The validity of the Notification was challenged by the plaintiff in Writ Petitions Nos. 5814 and 5815 of 1975. The very same contention was raised in those petitions also. This Court, as per Order dated 6-9-1976, came to the conclusion that the Notifications are perfectly valid. The descriptions of properties are accurate and the Government has fully and completely complied with the statutory requirements, and the same has become final. It was after the disposal of the writ petitions, the present suit was filed, and I do not find the same disclosed in the suit. Once this Court has declared the validity of the Notification, it is not for the Civil Court to say that the Notification is invalid or that the acquisition is tainted with mala fides. It is not the case of the plaintiff that this land was acquired. To implement the Scheme not only the property of the plaintiff's predecessor but also other lands were acquired. In fact, the acquisition was for the purpose of Slum Clearance Scheme, which cannot be but a public purpose.

9. Further, from the evidence in this case, the plaintiff who is a subsequent purchaser after the notification, understood the scope of the acquisition and also understood the details of the property acquired, and he was never misled by the Notification.

10. The Land Acquisition Court is a specially constituted Court, and if there is any misdescription either in the identity of the property or in its measurements, the plaintiff can get them rectified by approaching that Court, which has a special machinery for that purpose. I am of the view that the erratum notification has not misled the plaintiff regarding the property. Moreover, this is not a matter to be adjudicated by a Civil Court, and it comes exclusively within the jurisdiction of Tribunals constituted under the Land Acquisition Act.

11. Similar question was decided in the decision reported in : AIR 1996 SC523 (Laxmichand v. GramPanchayat, Kararia. Their Lordships of the Supreme Court have held thus (at p. 4424 of AIR):--

'. . . . It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the Civil Court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification under Section 4 and declaration under Section 6 of the Act are required to be published in the manner contemplated thereunder. The inference gives inclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made under Section 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference under Section 18 and a further appeal under Section 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated under Section 48 requires to be adhered to. If possession is taken it stands vested under Section 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the

Act, by necessary implication stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional Courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court.'

12. The suit is misconceived. I do not think the acquisition proceedings initiated by the defendants are bad due to any mala fides. I hold that the suit is barred in view of the decision in the writ petitions referred to supra.i.e., it is hit by the principle of res judicata. I further hold that the suit filed by the plaintiff is not maintainable, and the Civil Court has no jurisdiction to entertain such a suit.

13. In the result, I set aside the judgment of the lower Appellate Court and restore that of the trial Court. The second appeal is accordingly allowed, and the suit is dismissed with costs throughout.

14. Appeal allowed.