

A KERALA STATE HOUSING BOARD AND ORS. ETC.

v.

M/S. RAMAPRIYA HOTELS (P) LTD. AND ORS.

JULY 28, 1994

B [K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Kerala Land Acquisition Act, 1961 : Sections 3 (1), 6, 9, 16, 17 and 18.

C Section 16(1)—Object of—Compensation for land acquisition—Agreement for—More than one person interested in compensation—Entering into agreement of all persons jointly with Collector—Parties can waive the mandatory provision of—Expression "All persons interested agree"—Means not only in plural but also singular.

D Land Acquisition—Agreement for compensation between Owner and Collector—Land acquired mortgaged with Bank—Mortgagee Bank not a party to agreement—Mortgagee bank held a person interested in compensation but his non joinder rendered neither the agreement void nor the jurisdiction of Collector to make award void.

E Section 16(1)—Proviso—Interpretation of—Agreement for compensation—Notification under Section 3(1)—Requirement of publication of declaration—Prescribed period of four years—Reckoning of—Held expression 'such date' refers to the date of agreement and not date of notification under section 3(1).

F Interpretation of Statutes :

Statute—Words of analogous meaning—Interpretation of Statute—Construction of—Should be according to intent of Legislature.

G Statute—Provision—Two views possible—Construction in favour of sustaining constitutionality should be preferred.

Waiver—Mandatory procedure—Party can waive it.

H The respondent—Company entered into an agreement with the Collector, under section 16 of the Kerala Land Acquisition Act, 1961, whereunder

it agreed to accept compensation @ Rs. 1100 per each cent of land to be acquired. Pursuant thereto a notification under section 3(1) of the Act was published acquiring the land for the housing scheme envisaged by the appellant but the declaration under section 6 was not published within the prescribed period from the date of publication of notification under section 3(1). A fresh notification under section 3(1) issued on June 12, 1979 was upheld by the High Court. A declaration under section 6 was published on January 18, 1981 and after issue of notice under section 9(3) the respondent was awarded compensation @ Rs. 1100 per each cent, of the land acquired.

The respondent-Company's application for reference under section 20 was rejected against which a writ petition was filed in the High Court which held that (i) no award under section 16 could have been made because the bank to which the property under acquisition was mortgaged was not a party to the Contract; and (ii) by operation of the proviso to sub-section(1) of section 16 since four years had elapsed from the date of the agreement the award based on the agreement became void. Consequently the High Court allowed the writ petition and directed the Collector to make reference to the Civil Court under section 20 without reference to the agreement which became void.

The Housing Board and the state preferred appeals before this Court contending that (i) it was open to the respondents to waive the requirement of entering into a contract by all parties; (ii) in the circumstances of the case the respondents were estopped from contending that under section 16 no award can be made in the absence of the mortgagee bank as a party to the agreement; and (iii) the expression "such date" referred to in proviso to section 16(1) is referable to the date of the notification under section 3(1); the finding of the High Court that the award became void after the expiry of four years from the date of the agreement is clearly erroneous.

Dismissing the appeals, this Court

HELD : 1. The finding of the High Court that no award could have been made in respect of the respondent-Company is clearly erroneous and unsustainable and is accordingly set aside. [346-D]

2. The object of section 16(1) of the Kerala and Acquisition Act is to determine market value expeditiously and award compensation in terms of

- A agreement to avoid needless delay. Therefore, in the light of the purpose and object of section 16 "all person" must be interpreted to mean not only in a plural but also singular which would include any one, if more than one person are interested in the compensation, to mutually enter into an agreement with the Collector. The agreement will bind the contracting parties alone and the award made under section 16(1) may not thereby bind others.
- B By its implication, absence of other persons who have similar interest in the compensation does not render the agreement executed by one among them void. Section 16 is a beneficial provision and it is always open to the parties to waive the mandatory provision of entering into the agreement by all the persons jointly with the Collector under section 16(1).

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[345-G-H, 346-A]

Maharashtra State Financial Corporation v. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. & Ors., [1991] 2 SCC 637 and *Dhirendra Nath Gorai & Subal Chandra Shaw & Ors. v. Sudhir Chandra Ghosh & Ors.*, [1964] 6 SCR 1001, referred to.

- D *Maxwell on Interpretation of Statutes*, 11th Edn. p. 321; *Craies on Statute Law*, 7th Edn. p.177, referred to.

- 3. Though the mortgagee-Bank was interested in the compensation by operation of section 73(2) of the Transfer of Property Act to realise the amount due to it from the mortgagor from the compensation payable from hypothecated lands under Compulsory acquisition, yet its non-joinder as a party to the agreement does not render the agreement void nor become unenforceable nor renders the jurisdiction of the Collector to make the award under section 16(1) as illegal or void. [346-B-C]

- F 4. Section 16(1) and its proviso should be read in the context of section 16(2) and if so harmoniously read to give effect to the scheme of section 16, "such date" must be referable to the date of the agreement and not to the date of the notification published under section 3(1) of the Act. Thus after the expiry of four years from the date of the agreement, namely may 13, 1977 the Collector ceased to have power to pass the award under section 16(1). [349-D]

- G 5. The statement and object of the Kerala Land Acquisition Amendment Act, 1980 undoubtedly support the contention of the appellant-Board that the word "from such date" would be referable to the date of the publication of notification under section 3(1), but in interpreting the effect

of the proviso the court has to look into the purpose and the effect of the main section 16(1) on the agreement entered into by the Collector and the person interested in the compensation. The agreement ties the owner of the land with the market value mentioned thereunder, but undue delay in making the award leads to manifest injustice. Having had the power to make an award under the agreement and without any limitation the Collector would be left with his discretion to make the award leisurely at his whim or he may delay the issuance of the notification under section 3(1) or may issue successive declarations under section 6. This arbitrary exercise of power would result in hardship and manifest injustice to the owner of the land which would be violative of not only Article 14 of the Constitution, but also becomes an unfair procedure offending Article 21. Therefore, the legislature introduced the proviso. "Such date" referred to in the proviso, by necessary implication, must be referable to the date of agreement, though by strict construction it may lead to the conclusion that "Such date" may be referred to the date of publication of the notification under section 3(1). When two views are possible, to avoid manifest injustice, unjustness and arbitrariness or unconstitutionality of the statute, construction in favour of sustaining the constitutionality should be preferred. [348-B-F]

State of Gujarat v. Patel Raghav Nath, [1970] 1 SCR 335; Mansa Ram v. S.P. Pathak, [1984] 1 SCC 125; State of Madhya Pradesh v. Vishnu Prasad Sharma, [1966] 3 SCR 557; Kalyankutti Ammal v. State of Kerala, ILR (1981) 2 Kerala 53; Tribhuvandas Haribah Tamboli v. Gujarat Revenue Tribunal & Ors., [1991] 3 SCC 442 and A.N. Sehgal v. Raje Ram Sheoran, [1992] Suppl. 1 SCC 304, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4994 of 1990 and Civil Appeal No. 4995 of 1990.

From the Judgment and Order dated 26.7.89 of the Kerala High Court in O.P. No. 704 of 1982.

R.F. Nariman, E.M.S. Anam and M.T. George for the Appellants.

K.K. Venugopal, S.R. Setia and Rishi Kesh for the Respondents.

The Judgement of the Court was delivered by

K. RAMASWAMY, J. The two appeals arise from the same judg- H

A ment, the first one by the Housing Board and the second by the State, respondents before the Kerala High Court in O.P. No. 704 of 1982 dated July 26, 1989. The respondent-company had entered into an agreement on May 30, 1977 agreeing that "first party (respondent-company) is satisfied of their own will that on a consideration of all relevant facts and circumstances and the prevailing conditions Rs. 1100 Rupees eleven hundred only) per cent including all improvements situated on this land will be a fair value and proper price for the property." "The first party will accept without protest on their behalf value-compensation at Rs. 1100 (Rupees eleven hundred only) per cent inclusive of solatium and value for all structures and improvements on the property to be acquired and referred

B to in the schedule hereunder", "will not dispute the declaration of compensation awarded." "Entering into this agreement as it will be for his own benefit and he stands to gain by the implementation of the said agreement". The second party (Land Acquisition Collector) " is empowered to make an award" "at the rate of Rs. 1100 (Rupees eleven hundred only) per cent inclusive of solatium and value for all structures and improvements in and upon the said land". Pursuant thereto notification under s.3(1) of the Kerala land Acquisition Act 1961 (Act 21 of 1962 for short the Act) was published in the State Gazette acquiring 2.69.11 hectares in Survey Nos. 1759 part and 1127 parts in Trivendrum for the housing scheme envisaged by the appellants. Possession of the land was taken on February 1, 1978

C but since declaration under s.6 was not published within two years from the date of publication of s.3(1) notification, on June 12, 1979 fresh notification under s.3(1) was published. The Respondents questioned the notification by filing a writ petition on August 10, 1979 which was disposed of on October 13, 1980 upholding the fresh notification. A declaration under s.6 was published on January 18, 1981 and a notice under s.9(3) to

D make the award was served on the respondents pursuant to which the respondents laid claim at Rs. 30,000 per cent for compensation. The Dist. Collector made an award on August 21, 1981 at Rs. 1100 per cent and on September 19, 1981 the respondents filed an application under s.20 for reference to the Civil Court. Since the reference was not made writ petition

E O.P. 704 of 1982, came to be filed on January 26, 1982 which as stated earlier was allowed by the High Court under the impugned judgment.

H The High Court found that the property under acquisition alongwith other properties, was hypothecated by equitable mortgage to Indian Bank, branch at Trivandrum which as mortgagee was entitled to claim an interest

in compensation payable to the mortgagor. Since the bank was not a party to the contract, no award under s.16 of the Act could have been made. It also found that, by operation of the proviso to sub-s. (1) of s.16, since four years had elapsed from the date of the agreement, namely, May 13, 1977, the award based on the agreement became void. However, to avoid delay since award had already been made, the High Court directed the Collector to refer the claim under s.20 to the Civil Court without reference to the agreement which had become void. Accordingly the writ petition was allowed. Sri R.F. Nariman, the learned Senior counsel for the Housing Board contended that the view of the High Court is clearly illegal. Section 16 contemplates execution of an agreement between the owner of the land and the Land Acquisition Officer to fix market value at the agreed rate which binds the parties. It is open to the respondents to waive the requirement of entering into a contract by all parties. Even otherwise the respondents had suppressed the fact of hypothecation to have executed an equitable mortgage of the property in favour of the Indian Bank, claiming that respondent alone had exclusive title to the property, the respondent-company is estopped to contend that under s. 16 no award can be made in the absence of the mortgagee as a party to the agreement. He also contended that "such date" referred to in proviso to s. 16(1), is referable to the date of the notification under s.3(1). From the date of the second notification which came to be published after the execution of the contract, the period of four years would begin to run from the date of the second notification and the award having been made within four years from that date, the Collector was within his power to make the award under s.16 and the finding of the High Court that the award became void after the expiry of four years from the date of the agreement is clearly erroneous. In view of the agreement, no reference under s.18 can be made to the civil court. Sri K.K. Venugopal, learned Senior counsel for the respondents resisted the contentions.

The first question that arises for consideration is whether the phrase "all person interested agree" in s.16(1) required that each and every party having an interest in the compensation should necessarily be a party to the agreement. To appreciate whether this broad construction could alone subserve the legislative intent, should be considered in the light of the language in S.16 and purpose it seeks to serve and its effects, require consideration. Section 16(1) reads thus :

A "16(1) - If the Collector and all the persons interested agree, whether before or after the date of publication of the notification under sub-section (1) of section 3, as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same :

B Provided that an agreement executed before the date of publication of the notification under sub-section (1) of section 3, shall not be binding on the persons interested after the expiry of four years from such date.

C (2) Such award shall be filed in the Collector's office and shall, subject to the proviso to sub-section (1) be conclusive evidence, as between the Government and all persons interested, of the value of the land and the amount of compensation allowed for the same."

D A reading of sub-s.(1) no doubt indicates that if the collector and all the persons interested agree, whether before or after the date of publication of the notification under sub-s. (1) of section 3 as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same. It is stated in Maxwell on Interpretation of Statutes, 11th Edn., p.321, that two or more words which are susceptible of analogous meaning are coupled together *noscuntur a sociis*, they are to be understood as used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general. At p.334 and 335, it is further stated that the effect of the words of analogous meaning on each other and that of specific words on the more general one which closes the enumeration of them, as well as of their subordination to the more general principle gathering the intention from a review of the whole enactment and giving effect to its paramount object. At p. 338, it is stated that unless the contrary intention appears, in statutes passed after 1850, words importing the masculine gender include females, the singular includes the plural, and the plural the singular. In Craies on Statute Law, 7th Edn. at p.177 it is stated that the words of limitation are not to be read into a statute, if it can be avoided. But in some cases a limitation may be put on the construction of the wide terms of a statute. At p.178, it is stated that one of the safest guides to the construction of sweeping general words which it is difficult to apply in their

full literal sense is to examine other words of like import in the same instrument, and to see what limitation must be imposed on them. At p.183, it is stated that the question whether, when the legislature has used general words in a statute, not following particular or specific words, those are to receive any (and if so, what) limitation is one which may sometime be answered by considering whether the intention of the legislature on this point can be gathered from other parts of the statute. At p.184, it is stated that sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometime by foreign circumstances, so that they have ever been guided by the intent of the legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion. The statute has to be construed according to the intent of the legislature. In *Maharashtra State Financial Corporation v. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. & Ors.*, [1991] 2 SCC 637 at 651, para (6) this court held that it is settled rule of interpretation that statutory provisions should be construed in a manner which subserves the purpose of the enactment and does not defeat it and that no part thereof is rendered surplus or otiose. The object of s.16 is that the Collector and the owner of the land should agree for payment of compensation to the land acquired after obtaining the approval of valuation from the Dist. Collector or the Board of Revenue, as the case may be, under s.17 of the Act with a view to make the award expeditiously and to avoid further litigation, protection and prompt payment of compensation to the owner of the land. It is an enabling provision. The person or persons interested in the compensation would always be at liberty to agree by a contract with the Collector to make an award in terms thereof. It is true that Indian Bank, Trivendrum Branch was a mortgagee by deposit of title deeds by the respondent and co-nominee it was not a party to the agreement. The object of s.16(1) is to determine market value expeditiously and award compensation in terms of agreement to avoid needless delay. Therefore, in the light of the purpose and object of s.16 all persons must be interpreted to mean not only in a plural but also singular which would include any one, if more than one person are interested in the compensation, to mutually enter into an agreement with the Collector. The agreement will bind the contracting parties alone and the award made under s.16(1) may not thereby bind others. By its implication, absence of other persons who have similar

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A interest in the compensation does not render the agreement executed by one among them void. Section 16 is a beneficial provision and it is always open to the parties to waive the mandatory provision of entering into the agreement by all the persons jointly with the Collector under s. 16(1). In *Dhirendra Nath Gorai & Subal Chandra Shaw & Ors. v. Sudhir Chandra Ghosh & Ors.*, [1964] 6 SCR 1001, this Court held that a party can waive mandatory procedure. Accordingly we hold that though Indian Bank as a mortgagee was interested in the compensation by operation of s. 73(2) of the Transfer of Property Act to realise the amount due to it from the mortgagor from the compensation payable from hypothecated lands under compulsory acquisition, its non-joinder as a party to the agreement does not render the agreement void nor become unenforceable nor renders the jurisdiction of the Collector to make the award under s. 16(1) as illegal or void. May be, as stated earlier, neither the contract nor the award binds the non- party when it was entered into in an individual capacity by the contracting party. The finding of the High Court that no award could have been made in respect of respondent-company, therefore, is clearly erroneous and unsustainable. It is accordingly set aside. We are informed that the Indian Bank was paid of its debt and its request for reference under s.18 was negatived by the Collector, which became final.

E The crucial question whether a period of 4 years envisaged in proviso to s.16(1) should be reckoned from the date when the agreement was executed or from the date the publication of the notification, under s.3(1) after the agreement was executed and what would be the meaning of the words "from such date"? Before considering these questions, it is necessary to note few material facts and the pre-existing law. Unamended s. 16(1) gave power to the Collector and all persons interested in the compensation, to agree for fixation of the amount of compensation by an award by consent. It is otherwise known as statutory agreement. There was no limitation prescribed for making the award by the Collector. Sub-section (2) makes the award conclusive evidence between the Govt. and the persons agreed of the value of the land and the amount of compensation allowed for the same. In other words, by an agreement, the value of the amount gets pegged down under the agreement, to the date of issuance of the notification under s.3(1) of the Act, which is the same as s.4(1) of the Land Acquisition Act 1 of 1894, a condition precedent for a declaration to follow under s.6 of the Act. The claimant foregoes the right of reference

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under s.18 of the Act. It is notorious that after publication of the notification under s.4(1) of the central Act and declaration under s.6, years would roll by before making the award under s.11 of the Central Act. In *State of Gujarat v. Patel Raghav Natha*, [1970] 1 SCR 335 the period of limitation under Bombay Land Revenue Act for exercise of the power under s.65 came up for consideration. This court held that, "that there is no period of limitation prescribed under s.211, but it seems to me that this power must be exercised within a reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised". In *Mansa Ram v. S.P. Pathak*, [1984] 1 SCC 125 this court held that the power must be exercised "in a reasonable manner and the reasonable exercise of the power and it is exercised within a reasonable time". In the context of land acquisition, this court in *State of Madhya Pradesh v. Vishnu Prasad Sharma*, [1966] 3 SCR 557 had held that after the publication of the notification under s.4(1) requiring particular land in a locality, it must expeditiously issue "declaration under s.6 to that effect" that after begging the price by the issuance of the notification under s.4(1) the Government have no power to issue successive declarations under s.6 in respect of parcels of land covered by notification under s.4(1) at different times. The parliament amended s.6 by the Land Acquisition (Amendment and Validation) Act, 1967 and gave power to the government to make different declarations from time to time in respect of different parts of lands covered by the same notification under s.4(1). However, it introduced a proviso prescribing limitation of 3 years from the date of the publication of the notification. In the Land Acquisition (Amendment) Act 1984 it was further reduced to one year. Equally s.11A was made by 1984 Amendment Act prescribing 2 year's limitation from the date of publication of the declaration to make the award in respect of the proceedings taken under the Act and the proviso thereto gives further three years to make the award in the pending proceedings from the date of the commencement of 1984 Amendment Act. On expiry thereof, "proceedings for the acquisition of the land shall lapse". It is thus clear from the legislative mandate that the completion of passing of the award after the initiation of the acquisition proceedings are being unduly delayed and now it is enjoined to be done within 2 years from the date of publication of the declaration under s.6. The Kerala legislature recognising the same situation prevailing under the Act the Kerala Land Acquisition Amendment Act, 1980, suitably amended S.3 & 6 of that Act, s.16(1) was also amended.

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- A Preceding thereto a division bench of that court in *Kalyankutti Animal v. State of Kerala*, ILR (1981) 2 Kerala 53 interpreted the agreement and s.16(1) and held that the agreement under s.16(1) becomes void after the notification under s.3(1) lapsed. To give effect to such a lapsed agreement s.16(1) was suitably amended and proviso to s. 16(1) was made. The statement and objects in this behalf undoubtedly support the contention of the counsel for the Board that the word, "from such date" would be referable to the date of the publication of notification under s.3(1), but in interpreting the effect of the proviso the court has to look into the purpose and the effect of the main s. 16(1) on the agreement entered into by the Collector and the person interested in the compensation. It is seen that the agreement ties the owner of the land with the market value mentioned thereunder, but undue in making the award leads to manifest injustice. Having had the power to make an award under the agreement and without any limitation the Collector would be left with his discretion to make the award leisurely at his whim or he may delay the issuance of the notification under s.3(1) or may issue successive declarations under s.6. This arbitrary exercise of power would result in hardship and manifest injustice to the owner of the land which would be violative of not only Art. 14 of the Constitution, but also becomes an unfair procedure offending Art. 21. Therefore, the legislature introduced the proviso "such date", referred to
- E in the proviso, by necessary implication, must be referable to the date of the agreement, though by strict construction it may lead to the conclusion that "such date" may be referred to the date of the publication of the notification under the date of the publication of the notification under s.3(1). When two views are possible, to avoid manifest injustice, unjustness and arbitrariness or unconstitutionality of the statute, construction in favour of sustaining the constitutionality should be leaned.

In *Tribhovandas Haribah Tamboli v. Gujarat Revenue Tribunal & Ors.*, [1991] 3 SCC 442 this court held that the proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment and its effect is to be confined to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which

otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says, nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect. In that case it was held that by reading the proviso consistent with the provisions of s.88 of the Bombay Tenancy and Agricultural Act, the object of the main provision was sustained. In *A.N. Sehgal v. Raje Ram Seoran*, [1992] Suppl. 1 SCC 304 another bench interpreting proviso in the Haryana Service of Engineers Rules, 1960 held that the proviso to rule 5(2) (a) cannot be applied to confer the benefit of regular appointment on every promotee appointed in excess of 50% quota. This court harmoniously read the main provision and the proviso and gave effect to the rule.

It would, thus, be clear that s.16(1) and its proviso should be read in the context of s.16(2) and if so harmoniously read to give effect to the scheme of s.16, "such date" must be referable to the date of the agreement and not to the date of the notification published under s.3(1) of the Act. Thus considered, we are broadly in agreement with the High Court on this aspect and hold that after the expiry of four years from the date of the agreement, namely May 13, 1977, the Collector ceased to have power to pass the award under s.16(1). It is to be seen that the agreement validly executed, does not become void after expiry of the period prescribed under the statute. It remains valid, but becomes unenforceable. Since the proviso prescribes a limitation on the exercise of the power by the Collector under s.16(1) to make an award in terms of the contract, on its expiry he ceases to have power to make award in terms of the agreement. Since the High Court had not quashed the award with a view to avoid further delay, and directed the Collector to make a reference under s.18 of the Act to the Civil Court, we are informed that such a reference was, in fact, made by the Collector and is pending. By interim orders this court stayed further proceedings of the reference. Accordingly we dismissed the appeals and direct the civil court to expeditiously determine the market value according to law. However, it is made clear that the observation of the High Court in the judgment under appeals "that the Civil Court shall not be bound by the terms of the agreement Ex P-I in the matter of determining the compensation cannot come in the way of the Land Acquisition Collector

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- A relying upon the agreement as a piece of evidence as to what the parties had thought to be the market value of the acquired property with reference to the date of publication of preliminary notification and the court deciding on its evidentiary value in the matter of determination of the market value of the acquired property.
- B The appeals are dismissed, but in the circumstances parties would bear their respective costs.

T.N.A.

Appeals dismissed.