

Jawahar Singh
and others
v.
The State

Shamsher
Bahadur, J.

between the two communities and there was a likelihood of breach of peace. Such an argument did not prevail in the High Court though the Magistrate had thought that he had no power to drop the proceedings. The proceedings could be quashed if on the evidence itself no *prima facie* case is shown to exist. I am of the view that in the context and background of this case there can be no reasonable apprehension of a breach of peace now even if the allegations of the prosecution are accepted and consequently there hardly remains any justification to take action under section 107/151, Code of Criminal Procedure.

In this view of the matter, I direct that no further action should be taken in the matter and the proceedings would be accordingly quashed. Even if I was inclined to take the view that the proceedings could still continue before the Magistrate, I would in any event have reduced the bail-bonds to Rs. 1,000 in each case, but it is no longer necessary to make that direction as the petitioners also succeed under section 561-A of the Code of Criminal Procedure Code.

R. S.

LETTERS PATENT APPEAL

Before S. S. Dulat and Prem Chand Pandit, JJ.

KISHAN DEVI,—Appellant.

versus

DELHI DEVELOPMENT AUTHORITY,—Respondent.

Letters Patent Appeal No. 42-D of 1959.

1963

November, 6th. U.P. Town Improvement Act (VIII of 1919) as applied to Delhi—S. 64-A—Whether ultra vires the constitution—S. 64-B—Principles laid down for the betterment fee—Whether can be applied in the case of abandonment fee under S. 64-A.

Held, that the provisions of section 64-A of the U.P. Town Improvement Act, 1919, as applied to Delhi do not make any discrimination between one person or class of persons against others similarly situated. All owners, whose lands are not required for the execution of the scheme, can make an application to the Trust that the acquisition of their lands should be abandoned. In other words, none is debarred from exercising such a right and no discrimination is made between them. Sub-section (3) lays down that the sum in consideration of which the acquisition of land may be abandoned is to be fixed by the Trust. The contention that while fixing the abandonment fee, different owners, though similarly situated, can be treated differently by the Trust, because no guiding principles have been laid down in the Act in this regard and the matter has been left entirely to its unfettered discretion, is without any substance. The possibility of such a discriminatory treatment cannot, however, invalidate the legislation. If, in any case, the powers are abused by the Trust, the aggrieved party has ample remedies under the law. What will be struck down in such cases will not be the provisions which invest the authorities with such powers, but the abuse of the power itself. Secondly, the Trust is a body consisting of 7 trustees, who are all responsible persons and it cannot be assumed that this body would exercise the discretion vested in it arbitrarily. It cannot be said that a discretionary power is necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in responsible officers. Thirdly, in the very nature of things, it is extremely difficult to lay down any fixed principles for the determination of the abandonment fee, because this fee might vary in cases of different localities and from property to property in the same locality.

Held, that the principles laid down for the betterment fee in section 64-B of the Act cannot be applied in the case of abandonment fee under section 64-A of the Act for the following reasons:—

- (a) Betterment fee applies to those cases where the lands have not yet been acquired, while in the cases covered by section 64-A, the lands stand already acquired.

- (b) In cases of betterment fee, the lands are indirectly benefited by the scheme, while in the cases governed by section 64-A, the lands are directly benefited. In the latter type of cases, naturally, the lands would receive more advantages by the scheme, because of their situation.
- (b) As to how much increase there has been in the value of the land by virtue of the scheme, as mentioned in the provisions of section 64-B of the Act, would still be a discretionary matter with the Trust and no hard and fast rules can be laid down for the determination of the same.

Letters Patent Appeal from the Judgment dated 24th April, 1959 in Civil Reference Case No. 1 of 1955 passed by His Lordship Hon'ble Mr. Justice S. B. Kapoor, praying that by accepting the appeal the impugned section 64-A of the U.P. Town Improvement Act 1919 as extended to Delhi be declared ultra vires and reference answered in the affirmative.

H. S. TYAGI, ADVOCATE, for the Appellant.

S. N. SHANKER, AND M. L. KAPUR, ADVOCATES, for the Respondent.

JUDGMENT.

Pandit, J.

PANDIT, J.—Smt. Kishan Devi, appellant, was the owner of house No. 192, in Ward No. 10, Katra Sujan Rai, Delhi. The Delhi Improvement Trust, under the Delhi and Ajmeri Gate Delhi Slum Clearance Scheme, took proceedings to acquire this house through the Land Acquisition Collector. The Chief Commissioner, Delhi, sanctioned the acquisition of this property. The appellant then submitted an application under section 64-A of the U.P. Town Improvement Act, 1919, as applied to Delhi (hereinafter referred to as the Act), praying that the acquisition of the property be abandoned in consideration of the payment by her of a sum to be fixed by the Improvement Trust, as the

house was not required for the execution of the scheme. The Trust accepted this application and decided that the acquisition would be abandoned provided the appellant paid Rs. 40 per square yard as the land abandonment fee. The appellant, thereupon, enquire from the Trust as to how they had calculated this rate of Rs. 40. The Trust, however, refused to disclose this information. The appellant declined to pay this abandonment fee and, after serving the required notice, brought a suit against the Trust challenging the acquisition of the house in dispute and pleaded that section 64-A of the Act was *ultra vires* the Constitution inasmuch as sub-section (3) thereof authorised the Trust to fix arbitrarily any amount as abandonment fee.

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The suit was contested by the Trust on a number of grounds which gave rise to several issues, but we are at the present stage only concerned with issue No. 1, which is as follows:—

“Whether section 64-A, clause 3 or any part of it, of U.P. Town Improvement Act, as extended to Delhi is *ultra vires*? If so, what is its effect”

The learned Subordinate Judge was of the opinion that section 64-A of the Act in so far as it gave power to the Trust to fix any sum in consideration of which the acquisition might be abandoned, was *ultra vires* the constitution. Since this matter was necessary to be decided for the disposal of the case, he referred the following point of law for the opinion of this Court under section 113 of the Code of Civil Procedure:—

“Is section 64-A so far as that gives a power to the defendants to fix a sum in consideration of which the acquisition of land may be abandoned *ultra vires* the Constitution?”

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This reference was heard by Capoor J; who by his order, dated 24th April, 1959, held that the question regarding vires of section 64-A of the Act did not arise for decision in this case as the stage at which an objection to the acquisition could be taken had already passed. The learned Judge further found that even if it be held that this question did arise in the case, the impugned provision of the Act was not *ultra vires* the Constitution. As a result, the question so referred was answered in the negative. Against this decision, the present appeal has been filed under Clause 10 of the Letters Patent.

A preliminary objection has been raised that the order complained of does not constitute a 'judgment' within the meaning of Clause 10 of the Letters Patent and, consequently, no appeal lies from it.

It is not necessary to decide this preliminary objection, because I feel that on the merits the appellant has no case. The relevant portion of section 64-A of the Act is in the following terms:—

"S. 64-A. (1) In any case in which the Chief Commissioner has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Trust, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Trust in that behalf.

(2) The Trust shall admit every such application if it—

(a) reaches the Trust before the time fixed by the Collector under section 9 of

the Land Acquisition Act, 1894, for making claims in reference to the land, and

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(b) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

(3) If the Trust decides to admit any such application, it shall forthwith inform the Collector; and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the Trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

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The sole ground on which this section is alleged to be *ultra vires* the Constitution is that sub-section (3) thereof does not lay down any principle on the basis of which the sum in consideration of which the acquisition of the land may be abandoned is to be fixed. The Trust, according to the learned counsel, has been given arbitrary powers to fix any amount in a particular case. An unfettered discretion has been given to it and this sum may vary in similar cases and no rules for the guidance of the Trust have been laid down. In this connection, the learned counsel mainly relied on the decisions in *The State of West Bengal v. Anwar Ali Sarkar and another* (1), and *R. Balakrishnan v. State of Madras* (2). In the Supreme Court authority, it was held that provisions

(1) A.I.R. 1952 S.C. 75.

(2) A.I.R. 1952 Mad. 565.

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of section 5(1) of the West Bengal special Courts Act (10 of 1950) were *ultra vires* the constitution by reason of their being in conflict with Article 14. Therein, it was laid down that if a legislation discriminates one person or class of persons against others similarly situated and denies to the former the privileges that are enjoyed by the latter, it cannot but be regarded as 'hostile' in the sense that it affects injuriously the interests of that person or class. In the Madras authority, it was left to the discretion of the Textile Commissioner to permit in particular cases the acquisition and installation of new looms. Such an arbitrary and unfettered discretion, in the opinion of the learned Judges, would not amount to a reasonable restriction within the meaning of Article 19(5) and (6) of the Constitution.

The rulings relied upon by the learned counsel for the appellant have no application to the facts of the present case, because the provisions of section 64-A of the Act do not make any discrimination between one person or class of persons against others similarly situated. All owners, whose lands are not required for the execution of the scheme, can make an application to the Trust that the acquisition of their lands should be abandoned. In other words, none is debarred from exercising such a right and no discrimination is made between them. Sub-section (3) lays down that the sum in consideration of which the acquisition of land may be abandoned is to be fixed by the Trust. The contention of the learned counsel is that while fixing the abandonment fee, different owners, though similarly situated, can be treated differently by the Trust, because no guiding principles have been laid down in the Act in this regard and the matter has been left entirely to its unfettered discretion. This contention, in my opinion, is without any substance. Firstly, it is not the case of the appellant

that the Trust has, as a matter of fact, fixed different abandonment fees in cases of owners, who are similarly circumstances. If such a contingency arises and the powers are abused by the Trust then the aggrieved party has ample remedies under the law. The possibility of such a discriminatory treatment cannot however invalidate the legislation. What will be struck down in such cases will not be the provisions which invest the authorities with such powers, but the abuse of the power itself (see in this connection *Messrs. Panna Lal Binjraj and others v. Union of India and others* (3)). Secondly, the Trust is a body consisting of 7 trustees, who are all responsible persons and it cannot be assumed that this body would exercise the discretion vested in it arbitrarily. It has been held that it cannot be said that a discretionary power is necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in responsible officers (see in this connection *Matajog Dohed v. H. C. Bhari* (4)). Under these circumstances the apprehension of the learned counsel for the appellant that different owners, though similarly situated, will be treated differently, is without any foundation. Thirdly, in the very nature of things, it is extremely difficult to lay down any fixed principles for the determination of the abandonment fee, because this fee might vary in cases of different localities and from property to property in the same locality. The suggestion of the learned counsel for the appellant that the principles laid down for the betterment fee in section 64-B of the Act may be applied in the case of abandonment fee as well is not sound, because firstly betterment fee applies to those cases where the lands have not yet been acquired, while in the cases covered by section 64-A the lands stand already acquired

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(3) A.I.R. 1957 S.C. 397.

(4) A.I.R. 1956 S.C. 44=1955.

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Secondly, in case of betterment fee, the lands are indirectly benefited by the scheme, while in the cases governed by section 64-A, the lands are directly benefitted. In the latter type of cases, naturally, the lands would receive more advantages by the scheme, because of their situation. Thirdly, as to how much increase there has been in the value of the land by virtue of the scheme, as mentioned in the provisions of section 64-B of the Act, would still be a discretionary matter with the Trust and no hard and fast rules can be laid down for the determination of the same.

The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs in this Court.

Dulat, J.

S. S. DULAT, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Bofere D. Falshaw, C.J., and Harbans Singh, J.

KAKU SINGH AND OTHERS,—Appellants.

versus

KAPUR SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 195 of 1962:

1963
Nov., 7th.

Code of Civil Procedure (Act V of 1908)—S. 144—Pre-emption decree passed, pre-emptor depositing the entire purchase money in Court and obtaining possession of the major portion of the land—Vendees filing appeal and not withdrawing purchase money from the Court—Appeal succeeding and vendees claiming restitution—Whether entitled to claim mesne profits from the pre-emptor.

Held, that since the vendees could have withdrawn the purchase money from the Court and enjoyed the use