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M/S. GIRNAR TRADERS

v

STATE OF MAHARASHTRA AND ORS.

OCTOBER 14, 2004

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[SHIVARAJ V. PATIL AND B.N. SRIKRISHNA, JJ.]

Maharashtra Regional and Town Planning Act, 1966:

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Chapter VII—ss. 126(2) and (4)—Acquisition of land under the Act—Failure to make award within two years from date of declaration under sub-s. (2) of s.126—Effect of—Applicability of s.11-A and other provisions of Land Acquisition Act, 1894 as amended by Act 68 of 1984 to acquisition of land made under the State Act—Decision in Sant Joginder Singh's case holding that s.11-A of Central Act would not apply to acquisition of land made under the State Act, referred to larger Bench for reconsideration—*

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Land Acquisition Act, 1894—s.11-A.

**State of Maharashtra and Anr. v. Sant Joginder Singh Kishan Singh and Ors., [1995] Supp. 2 SCC 475, referred to larger Bench for reconsideration.*

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Gauri Shankar Gaur and Ors. v. State of U.P. and Ors., [1994] 1 SCC 92; Nagpur Improvement Trust and Anr. v. Vithal Rao and Ors., [1973] 1 SCC 500 and Maharashtra State Road Transport Corporation v. State of Maharashtra and Ors., [2003] 4 SCC 200, relied on.

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U.P. Avas Evam Vikas Parishad v. Jainul Islam, [1998] 2 SCC 467, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3703 of 2002.

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From the Judgment and Order dated 29.3.2000 of the Bombay High Court in W.P. No. 822 of 2000.

V.A. Mohta, Aniruddha P. Mayee, Sanjeev Kr. Choudhary and Neelakanth Nayak with him for the Appellant.

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V.N. Ganpule, Dr. N.M. Ghatate, Ravindra K. Adsure, for Mukesh K. Giri,

Shivaji M. Jadhav, Himanshu Gupta and Brij Kishor Sah with them for the Respondents. A

The following Order of the Court was delivered :

This appeal is directed against the judgment of the Division Bench of the High Court of Judicature at Bombay, Aurangabad Bench, dismissing the writ petition of the appellant under Article 226 of the Constitution of India. The question for consideration is: Whether all the provisions of the Land Acquisition Act, 1894 as amended by Central Act 68 of 1984 can be read into the provisions under Chapter VII of the Maharashtra Regional and Town Planning Act, 1966 for an acquisition thereunder? B C

The appellant is a registered partnership firm owning certain lands situated within the jurisdiction of Second Respondent, Jalgaon Municipal Council. The land owned by the appellant was subject to a reservation in the draft development plan of Jalgaon town, which was published on 19.3.1987. Since the appellant was unable to develop the land under reservation, and no steps were being taken by the Jalgaon Municipal Council to acquire the said land under the provisions of The Maharashtra Regional And Town Planning Act, 1966 (hereinafter referred to as the 'M.R.T.P. Act'), the appellant issued a notice dated 19.1.1989 under Section 49(1) of the M.R.T.P. Act, calling upon the State Government to either confirm or refuse the purchase notice within the period fixed under Section 49 of the M.R.T.P. Act. D E

On 25.7.1989 the State Government, acting under Section 49(4) of the M.R.T.P. Act, confirmed the purchase notice issued by the appellant. Despite confirmation of the purchase notice, Second Respondent, Jalgaon Municipal Council did not take any steps under Section 126 of the M.R.T.P. Act, nor did it apply to the State Government for acquisition of the land under reservation. F

Ultimately, on 3.10.1991, the First Respondent State Government issued a notification under Section 126(4) of the M.R.T.P. Act read with Section 6 of the Land Acquisition Act, 1894, declaring that the concerned land was required for a public purpose as indicated in the notification. This notification expressly mentions that the period of three years prescribed under Section 126(2) of the M.R.T.P. Act was over and, therefore, the State Government was acting under sub section (4) of Section 126 of the M.R.T.P. Act. G

It is the case of the appellant that it had no knowledge of this declaration dated 3.10.1991 as no individual notice has been served on it, though this H

A declaration was published in the Official Gazette on 15.10.1991. Despite the declaration under Section 126(4) of the M.R.T.P. Act, as aforesaid, nothing happened till March, 1994. On 23.3.1994 the appellant issued second purchase notice under Section 49(1) of the M.R.T.P. Act. By a reply dated 10.4.1995, the State Government informed the appellant that inasmuch as the earlier purchase notice dated 19.1.1989 had already been confirmed by the State Government on 25.7.1989, and further since the Jalgaon Municipal Council has already initiated proceedings for acquisition of the land, the second purchase notice was rejected.

The appellant challenged the said rejection by his Writ Petition No. 2829 of 1996 before the High Court of Judicature at Bombay. This writ petition was disposed of by the High Court by its judgment and order dated 31.3.1997 by which the State Government and the Municipal Council were directed to initiate the proceedings for acquisition of the lands in question within one year and complete the same within the time prescribed under the M.R.T.P. Act. The High Court further directed, "in case the authorities fail to initiate the acquisition proceedings within the prescribed period, the lands of the petitioners shall be deemed to have been released from the reservation."

According to the appellant, despite the order of the High Court, it was not informed about any steps taken by the concerned authorities for acquisition of its land. On 13.4.1998, the appellant issued a letter to the Special Land Acquisition Officer, Respondent No. 3, calling upon him to disclose whether any proceedings had been initiated for acquisition. The appellant, however, received no reply.

On 18.2.1999, Respondent No. 3 issued a notice to the appellant under Section 12(2) of the Land Acquisition Act, 1894 calling upon him to accept the compensation for the land acquired as per the award. The appellant moved a writ petition No. 822 of 2000 in the High Court of Judicature at Bombay and sought quashing of the notice under Section 12(2) of the Land Acquisition Act, 1894 and a direction enabling it to develop its land for residential purpose. By the impugned judgment, the High Court dismissed the writ petition by holding that the prayer for declaration of dereservation of the subject land as well as granting of permission to develop the property for residential purpose had already been declined by its earlier order dated 31.3.1997, which had become final as far as the appellant was concerned. The High Court thus took the view, "the only issue we are required to examine i.e. whether the Land Acquisition Officer has complied with our directions and

if the directions were not complied within the period of one year, as set out by us, whether the Petitioner is entitled for the reliefs prayed for in this petition." The High Court held: "on perusal of the documents submitted before us we are satisfied that the requisite steps have been taken by the Special Land Acquisition Officer for acquisition of the subject land and after writ petition No. 2829 of 1996 was disposed of, there was no necessity to initiate fresh action by the Planning Authority as contemplated under Section 126(1)(c) of the M.R.T.P. Act." In this view of the matter, the writ petition came to be dismissed. Hence, this appeal by special leave. A B

Mr. V.A. Mohta, learned senior counsel for the appellant urged that the Scheme of the M.R.T.P. Act shows that, on receipt of an application under sub section (1) of Section 126, if the State Government is satisfied that the land specified in the application is required for the public purpose, it may make a declaration to that effect in the Official Gazette in the manner specified in the Land Acquisition Act, 1894, and such declaration is deemed to be a declaration duly made under Section 6 of the Land Acquisition Act, 1894. The proviso to sub section (2) of this section prescribes the period within which such declaration has to be made. Sub section (3) of this section provides that on publication of the declaration under Section 6 of the Land Acquisition Act, 1894, the Collector shall proceed to take order for the acquisition of the land under the said Act, and thereafter, the provisions of the Land Acquisition Act, 1894 shall apply to the acquisition of the said land, subject to the modification introduced by sub section (3), which pertains only to the market value of the land. The only change made in the Scheme of this Act is that, if the State Government fails to make the declaration under sub section (2) within the time provided in the proviso thereto, the declaration does not become bad as it is saved by sub section (4). Under sub section (4), notwithstanding the fact that the requisite declaration under sub section (2) had not been made within the time provided therein, the State Government is empowered to issue a fresh declaration for acquiring the land in the manner provided by sub sections (2) and 3 of Section 126 of the M.R.T.P. Act, but, if that be done, the market value of the land for the purpose of compensation shall be the market value at the date of such declaration made afresh. C D E F G

Mr. Mohta submitted that barring the above special modification introduced in the Scheme of acquisition of land, in all other respects, the provisions of the Land Acquisition Act, 1894 would *mutatis mutandis* apply to an acquisition under Chapter VII of the M.R.T.P. Act. He pointed out that the M.R.T.P. Act contains neither any provision for payment of compensation, H

A nor does it prescribe the time within which the award has to be made after a declaration is made under sub sections 2, 3 or 4 of Section 126. It is urged that the Legislature could not have left it vague and indefinite. In the submission of the learned counsel, this is a situation of invocation of the provisions of the Land Acquisition Act, 1894, not by incorporation, but by reference. In other words, as and when the provisions of the Land Acquisition Act, 1894 are amended, all the amended provisions would be attracted to an acquisition under Chapter VII of the M.R.T.P. Act, unless barred expressly or by direct implication. The amendments introduced in the Land Acquisition Act, 1894 by Central Act-68 of 1984 would all automatically apply. Consequently, the period of limitation prescribed under Section 11A for making the award would squarely apply.

Appellant urges that while sub section (4) of Section 126 may save a declaration under Section 6 of the Land Acquisition Act, 1894 from becoming bad because of lapse of time (though, subject to the modification with regard to the market value of the land prescribed therein), there is nothing in the M.R.T.P. Act which precludes, expressly or by direct implication, the provisions of Section 11A from applying to govern the period within which the award has to be made. In the facts of the present case, there is no dispute that the declaration under Section 126(4) was made on 3.10.1991 and published in the Official Gazette on 15.10.1991, while the award is said to have been made on 18.2.1999. In these circumstances, the award not having been made within the period of two years from the date of the declaration under Section 6, the entire proceedings for the acquisition of the land would lapse by reason of Section 11A of the Land Acquisition Act, 1894.

Appellant relies heavily on the Statements of Objects and Reasons attached to the Bill preceding the Act 68 of 1984. The attention of the Legislature was drawn to the fact of pendency of acquisition proceedings for long time and, "the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them."

Finally, it is contended that the amendments introduced by Central Act 68 of 1984 in the Land Acquisition Act, 1894 were by way of a composite package and it is not open to anyone to pick and choose them in their application, unless so provided in any competent legislative enactment. In the present case, there is nothing in the provisions of the M.R.T.P. Act which could oust the application of the entire gamut of amendments introduced by

Central Act 68 of 1984 and, therefore, all acquisitions, even under the M.R.T.P. Act, must be read subject to them. A

Learned counsel for the respondents, refuting the contentions urged on behalf of the appellant, placed heavy reliance upon the judgment of a Bench of two learned Judges in *State of Maharashtra and Anr. v. Sant Joginder Singh Kishan Singh and Ors.*¹. Learned counsel for the respondents strongly urged that this judgment clinches the arguments against the appellant. The same contention as urged by the appellant before us has been considered and negatived in *Sant Joginder Singh* (supra), wherein it is observed (vide paragraph 13) as under: B

“It is next contended that since no separate procedure was prescribed by the Act for determining the compensation, by necessary inference, the Central Act was intended to be applied *mutatis mutandis* to the acquisition under the Act. He seeks support from the award made by the Collector in that behalf. It is true that there is no express provision under the Act to determine compensation for the land acquired under the Act. Therefore, by necessary implication, compensation needs to be determined by applying the principles in Section 23 of the Central Act. But, there is a distinction between procedural and substantive provisions of a statute. Determination of compensation by applying appropriate principles is relatable to substantive provision, whereas making of award within a prescribed period is basically procedural. So, merely because Section 23 of the Central Act would apply to acquisition under the Act, it is not enough to hold that what is contained in Section 11-A would also apply. Further, what has been provided in sub-section (4) of Section 126 of the Act is a clear indication that failure to make the award within two years from the date of the declaration under sub-section (2) of Section 126 of the Act, would not render the notification published under Section 125 of the Act non est.” C D E F

Appellant urges that *Sant Joginder Singh* (supra) needs reconsideration by a larger Bench. G

Upon careful consideration of the contentions urged before us, we are inclined to accept the submissions of Mr. Mohta for more than one reason. First, although the M.R.T.P. Act and similar regional town planning Acts did

¹ [1995] Supp 2 SCC 475.

A not contain specific provisions for payment of compensation, when they were challenged as infringing Article 14 of the Constitution, their validity was upheld by reading the provisions as to payment of compensation contained in the Land Acquisition Act, 1894 into the regional town planning Acts. [See in this connection: *Gauri Shankar Gaur and Ors. v. State of U.P. and Ors.*² and *Nagpur Improvement Trust and Anr. v. Vithal Rao and Ors.*³]

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Secondly, *Sant Joginder Singh* (supra) appears to have been doubted by a judgment of another Bench of two learned Judges in *Maharashtra State Road Transport Corporation v. State of Maharashtra and Ors.*⁴ This was a case under the provisions of the same Act, viz. M.R.T.P. Act, 1966. After considering the judgments in *U.P. Avas Evam Vikas Parishad v. Jainul Islam*⁵ and *Nagpur Improvement Trust* (supra), it was held that the provisions with regard to compensation made by Central Act 68 of 1984, by addition of sub section (1A) to Section 23 and the increased amount of solatium under Section 23(2) and the interest payable under Section 28 would all apply to an acquisition under Chapter VII of the M.R.T.P. Act. Dealing with *Sant Joginder Singh* (supra) the Division Bench of this Court explained away *Sant Joginder Singh* by observing: "the ultimate conclusion in *Sant Joginder Singh* case seems to rest on the ratio that there is sufficient indicia in the M.R.T.P. Act itself to exclude the applicability of Section 11-A of the LA Act in view of sub-sections (2) and (4) of Section 126. As we are approaching the question of correct interpretation of Section 126(3) from a different perspective, there is no need to enter into a further discussion as to whether and to what extent support can be drawn from this decision." Reading the judgment in *Maharashtra State Road Transport Corporation* (supra), it appears to us that, the Division Bench in that case did not seem to agree with the proposition that was laid down in *Sant Joginder Singh* (supra).

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There appears to be no good reason to shut out or preclude the amendments introduced by Central Act 68 of 1984 in the Land Acquisition Act, 1894 from applying to an acquisition under Chapter VII of the M.R.T.P. Act. Or else, the consequence would be that, in respect of two land holders there would be arbitrary discrimination in the matter of acquisition of their

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²[1994] 1 SCC 92.

³[1973] 1 SCC 500 Paragraphs 30 and 31.

⁴[2003] 4 SCC 200.

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⁵[1998] 2 SCC 467.

lands, merely because in one case the acquisition is by the direct route of the Land Acquisition Act, 1894 and, in another case, through the indirect route of the M.R.T.P. Act. The vice of discrimination pointed out by a Bench of Seven learned Judges in *Nagpur Improvement Trust and Anr.* (supra) (vide Para 31), would affect such a situation. In order to avoid such a situation, and to save the constitutionality of the provisions of the M.R.T.P. Act, the provisions of enhanced benefits introduced by Central Act 68 of 1984 were read into the provisions of the M.R.T.P. Act, and an acquisition under the M.R.T.P. Act was held to be governed by the same provisions. The same principle should apply in the matter of attracting the provisions of Section 11A of the Act 68 of 1984 also to the acquisition under the M.R.T.P. Act.

Thirdly, if the provisions of the M.R.T.P. Act are read as contended by the learned counsel for the respondents, in the light of *Sant Joginder Singh* (supra), then it would be open to the authorities, after issuing a declaration under sub section (3), to go into hibernation and leave the matter hanging in perpetuity. That certainly would seriously affect the rights of the land holder preventing him from developing the land or alienating it, merely because the authority chooses to act under one Act instead of the other. This again, would attract the wrath of Article 14 of the Constitution, not only on account of discrimination, but also on account of arbitrariness.

We, therefore, see no good reason as to why the provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984 should not be read into an acquisition under Chapter VII of the M.R.T.P. Act, to the extent not precluded by M.R.T.P. Act, 1966. Section 11A being one such section, it may have to be applied to the acquisition under Chapter VII of the M.R.T.P. Act.

For these reasons, in our considered view, the decision in *Sant Joginder Singh* (supra) requires reconsideration by a larger Bench.

The Registry is directed to place the papers before the Hon'ble Chief Justice of India for appropriate directions in the matter.

R.P.

Reference to larger bench.