

A

STATE OF MAHARASHTRA AND ANR.

v.

SANT JOGINDER SINGH KISHAN SINGH AND ORS.

FEBRUARY 22, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

C

*Maharashtra Regional and Town Planning Act, 1966 : Compensation for land acquired—Determination of—Absence of express provision—Can be determined by applying mutatis mutandis the principles laid down in Section 23 of the Land Acquisition Act, 1894.*

*Section 125—Effect of amendment—Notification issued there-under—Did not lapse after expiry of three years—Fresh declaration made under Section 126(4) valid.*

D

*Section 126(2)—Effect of amendment—Applicability of—Applied to pending as well as later proceedings.*

*Land Acquisition Act, 1894 : Section 23—Acquisition of land—Compensation—Determination of—Substantive provision not procedural.*

E

The Maharashtra Regional & Town Planning Act, 1966 was amended and a notification under Section 125 of the Act was published. The land could be acquired by agreement with the owner, or making an application to the State Government for acquisition under Land Acquisition Act, 1894, in which event by operation of the proviso to sub-s.(2) s.126, the declaration has to be made within three years from the date of the publication of notification under s. 125. The notification under s.125 is treated as one under s.4(1) and the declaration under s.2 of s.126 as declaration under s.6 of the Central Act. The failure to have the declaration published within three years entails with the prohibition to take further action in acquiring the land.

G

The respondent's land was acquired subsequent to the amendment of the Act. The respondent filed a writ petition in the High Court challenging the said acquisition. The High Court allowed the writ petition on the ground that the amendment would apply only to the pending proceedings and not to later proceedings. Aggrieved by the High Court's judgment the

H

appellant preferred the present appeal.

On behalf of the respondent it was contended that since acquisition of the land was compulsory expropriation, restrictive interpretation should be given; that though there was no express provision that the notification published under s.125 would lapse, by operation of s.11A of the Land Acquisition Act, 1894 introduced by the L.A. Amendment Act 68 of 1984 award had to be made within two years from the date of declaration published under s.6 of the Central Act i.e. under s. 126(2) of the Act; that this period of limitation must be deemed to have been incorporated in the Act; that the only course open to the State was to issue the notification under s. 125 afresh, if law permitted and it should not resort to the publication of the declaration under sub-s. (4) of s. 126;

Allowing the appeal, this Court

**HELD : 1.1.** Section 126(4) of the Maharashtra Regional & Town Planning Act, 1966 gives the legislative intent that if declaration is not made within three years of having been made, the aforesaid period expired on the commencement of the Amendment Act, the State Government has been empowered to make a fresh declaration for acquiring the land in the manner provided by sub- ss. (2) and (3) of s. 126 of the Act. [246-E]

**1.2.** The legislature being cognizant of the consequences that would flow from long delay in publication of the declaration in the official gazette under sub-s. (2) of s. 126, provision was made in that behalf to put a fetter on the exercise of power under s.126(2) and simultaneously mitigated the hardship to be caused to the public purpose as well as to private interest of the owner of the land. [247-F]

**2.1.** While permitting the State to exercise its power of eminent domain, the owner of the land or the person interested in the land has been relieved of hardship of payment of the compensation as per the price prevailing as on the date of publication of the notification under s.125 (s.4(1) of the Land Acquisition Act, 1894) and directed that market value be determined as on the date of publication of the fresh declaration under sub-s.(4) of s. 126. [247-G]

**2.2.** Though declaration under sub-s.(2) of s. 126 is not made within three years as prescribed under proviso to sub-s. (2) of s.126, by necessary

A inference it would be construed that notification under s. 125 does not lapse and fresh declaration made under sub-s.(4) of s.126 is valid, be it made after the Amendment Act came into force or the one made under the unamended Act and three years had expired before the Amendment Act has come into force. The Government was then clearly within its power to have published the declaration under sub-s. (2) of s. 126 of the Act in the Official Gazette. [248-D-E]

*Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association and Ors.*, [1988] (Supp.) SCC 55, referred to.

C 3.1. The State legislature amended the Act by the Amendment Act and introduced 3 years limitation for publication of the declaration under sub-s.(2) of s. 126. In s. 128, it had expressly engrafted the provisions of ss. 16, 17 and 24 of the Central Act as its part. Wherever the legislature intended to apply the specific procedure or the fetters in exercising the power as visualised by the Central Act, it did so specifically. After the D Central Act 68 of 1984 has come into force, no attempt was taken by the State legislature to amend the Act introducing or incorporating s.11A of the Central Act as part of the Act. Since the legislature had incorporated specific provisions of the Central Act, the necessary conclusion is that the legislature did not intend to apply the unspecified provisions of the E Central Act to the exercise of power under the Act. In this behalf it is to be remembered that there is a distinction between incorporation and adoption by reference. If the legislature would have merely adopted the Central Act, subsequent amendments to that Act made under Act, 68 of 1984 would have become applicable per force. [248-H, 249-A-B]

F *Gauri Shankar Gaur v. State of U.P.*, [1994] 1 SCC 92, followed.

G 3.2. 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 need to be determined applying the principles in s. 23 of the Central Act. But, there is a distinction between H 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 s.23 of the Central Act would apply to acquisition under the Act, is not enough to hold that what is contained in s.11-A would also apply. Further, what has been provided in

sub-s. (4) of s.126 of the Act is clear indication that failure to make the award within two years from the date of the declaration under sub-s. (2) of s. 126 of the Act, would not render the notification published under s. 125 of the Act non-est. [250-B-D] A

3.3. It is clear from the opening part of Section 126(4) of the Act that the Amendment Act applies not only to the proceedings which were pending when the Amendment was brought into force but also to the proceedings initiated afterwards. [250-E] B

*Shiorani v. State of Maharashtra*, (1994) Mh.L.J. 1821, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4925 of 1989 etc. etc. C

From the Judgment and Order dated 8.2.89 of the Bombay High Court in W.P. No. 312 of 1982.

K. Madhava Reddy, Dr. N.M. Ghatate, A.S. Bhasme, S.C. Birla, Sunil Dogra, P.H. Parekh, S.V. Deshpande, S.K. Agnihotri, Rajendra Mal Tatia, Indraw Makwana, A.B. Lal and Ms. Punam Kumari for the appearing parties. D

In-person in C.A. No. 4826/90. E

The following Order of the Court was delivered :

S.L.P. Nos. 18079/91, 17883/90 are taken on board. Substitution allowed.

Leave granted in all the S.L.Ps. F

A common question of law arises for decision in these matters. Hence, they are disposed of together.

The Maharashtra Regional & Town Planning, Act 37 of 1966, (for short 'the Act') was invoked for acquiring the land in question by the Regional & Town Planning Board for planned development in the State of Maharashtra. The facts in C.A. No. 4925/89 are sufficient for consideration and decision in these appeals. The Act was amended by Amendment Act 1970 which came into force on February 17, 1971 as Act 14 of 1971. A notification under s.125 of the Act was published on December 28, 1972. G H

- A** The land could be acquired by agreement with the owner, or making an application to the State Government for acquisition under Land Acquisition Act, 1894, (for short 'the Central Act') in which event by operation of the proviso to sub-s. (2) of s. 126, the declaration has to be made within three years from the date of the publication of notification under s. 125.
- B** The notification under s.125 is treated as one s.4(1) and the declaration under s.2 of s.126 as declaration under s.6 of the Central Act. The failure to have the declaration published within three years entails with the prohibition to take further action in acquiring the land.

Sub-s. (4) lifts the embargo thus :

- C** " (4) If a declaration is not made within the period referred to in sub-s.(2) or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1970, the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894, in the manner provided by sub-ss. (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh."

- E** A reading of sub-s. (4) would give us the legislative intent that if declaration is not made within three years or having been made, the aforesaid period expired on the commencement of the Amendment Act, the State Government has been empowered to make a fresh declaration for acquiring the land in the manner provided by sub-ss. (2) and (3) of s.126. The rider to the exercise of the power of eminent domain is that the market value of the land should be as at the date of fresh declaration under s. 126(2) published in the official Gazette. In other words, on publication of the notification under s. 125, the market value has been pegged down to the date of its publication in the State Gazette. Since there lapsed time between the dates of the notification and the declaration, the owner is relieved from the hardship of determination of compensation as per prices prevailing as on the notification under s. 125; and the rise in the market value between the dates of the publication of the notification and the declaration is set off. The legislature while giving power to the State to issue declaration after the expiry of three years or having made the fresh declaration as valid, relieved the owner or person interested in the land

from hardship; and the crucial date for determination of the compensation is the date on which the declaration under sub-s. (4) of s. 126 is published in the official gazette treating that declaration as a fresh one. Thereby the legislative intention would be clear that though three years period had expired after the publication of the notification under s. 125 or the declaration made under sub-s.(2) had expired before the commencement of the Amendment Act, the State Government has been given power to have the declaration published afresh. In other words, power was given to have the declaration published afresh so as to proceed with making the award but to determine the compensation as per the price prevailing as on the date of the fresh declaration published in the Gazette afresh.

Dr. N.M. Ghatate, learned Senior counsel for the respondents, contends that since acquisition of the land is compulsory expropriation, restrictive interpretation should be given. He further contends that though there is no express provision that the notification published under s.125 would lapse, by operation of s.11A of the Central Act introduced by the L.A. Amendment Act 68 of 1984, award has to be made within two years from the date of declaration published under s.6 of the Central Act i.e. under s.126(2) of the Act; and this period of limitation must be deemed to have been incorporated in the Act. Thereby, the only course open to the State is to issue the notification under s. 125 afresh, if law permits and it should not resort to the publication of the declaration under sub-s.(4) of s.126.

We find no force in the contentions. The legislature being cognizant of the consequences that would flow from long delay in publication of the declaration in the official gazette under sub- s. (2) of s.126, provision was made in that behalf to put a fetter on the exercise of power under s. 126(2) and simultaneously mitigated the hardship to be caused to the public purpose as well as to private interest of the owner of the land. In other words, while permitting the State to exercise its power of eminent domain, the owner of the land or the person interested in the land has been relieved of hardship of payment of the compensation as per the price prevailing as on the date of publication of the notification under s.125 [s. 4(1) of the Central Act] and directed that market value be determined as on the date of publication of the fresh declaration under sub-s.(4) of s. 126.

This Court in *Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association & Ors.*, [1988] Supp. SCC 55, had con-

A sidered the effect of provisions of s. 126, in particular the proviso to sub-ss.(2) and (4), while angulating the reservation under s.127 and held thus :

B "The conjoint effect of sub-ss. (1), (2) and (4) of s.126 is that if no declaration is made within the period referred to in sub-s. (2), that is to say, before the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, the compensation payable to the owner of the land for such acquisition, in that event, shall be the market value on the date of the fresh declaration under s.6 of the Land Acquisition Act i.e. the market value not at the date of the notification under s.4(1) of the Land Acquisition Act but the market value at the date of declaration under s.6. That is one of the safeguards provided under the Act."

D Therefore, it would be clear that though declaration under sub- s.(2) of s.126 is not made within three years as prescribed under proviso to sub-s. (2) of s.126, by necessary inference it would be construed that notification under s.125 does not lapse and fresh declaration made under sub-s. (4) of s.126 is valid, be it made after the Amendment Act came into force or the one made under the unamended Act three years had expired before the Amendment Act has come into force. The Government was then clearly within its power to have published the declaration under sub-s. (2) of s. 126 in the Official Gazette. This conclusion of ours gets fortified from the consideration of the effect of s.127, as interpreted by this Court in aforesaid case.

F It is next contended by Dr. N.M. Ghatate that in appeal arising from S.L.P. No. 5251/90 since the award has not been made within two years from the date declaration under sub-s. (2) of s. 126, by operation of s.11A of the Central Act, the notification published under s. 125 shall be deemed to have been lapsed and, therefore, the authorities are devoid of jurisdiction to proceed further. We find no force in the contention too. It is seen that the State legislature amended the Act by the Amendment Act and introduced 3 years limitation for publication of the declaration under sub-s. (2) of s.126. In s.128, it had expressly engrafted the provisions of ss. 16, 17 and 24 of the Central Act as its part. In other words, wherever the H legislature intended to apply the specific procedure or the fetters in

exercising the power as visualised by the Central Act, it did so specifically. After the Central Act 68 of 1984 has come into force, no attempt was taken by the State legislature to amend the Act introducing or incorporating s.11A of the Central Act as part of the Act. Since the legislature had incorporated specific provisions of the Central Act, the necessary conclusion is that the legislature did not intend to apply the unspecified provisions of the Central Act to the exercise of power under the Act. In this behalf it is to be remembered that there is a distinction between incorporation and adoption by reference. If the legislature would have merely adopted the Central Act, subsequent amendments to that Act made under Act 68 of 1984 would have become applicable per force.

In *Gauri Shankar Gaur v. State of M.P.*, [1994] 1 SCC 92, the U.P. legislature, while enacting U.P. Awas Evam Vikas Prishad Adhiniyam, 1965, enacted s. 55 and the schedule annexed to the Act making appropriate incorporation therein of the provisions of the Central Act. It was contended that as the Central Amendment Act 68 of 1984 prescribed limitation of 3 years for publication of the declaration under s.6, on expiry thereof, the notification under s. 28 of the Adhiniyam stood lapsed. The correctness of the contention and the scope and ambit of s. 55 read with the schedule was considered by one of us (K. Ramaswamy, J.). After exhaustive consideration of the case law on the topic in paragraphs 31-32, it was held that in legislation by incorporation, the provisions of the former Act becomes an integral part of the latter Act, as if it was written with ink and printed in the later Act. It is not so in case of adoption by reference. In such a case, when provisions in the former Act are repealed or amended, they cannot, unless expressly made applicable to the subsequent Act, be deemed to be incorporated in it. The later Act is totally unaffected by any amendment or repeal. Whether a case is one of incorporative or reference is to be judged from the scheme, language employed and purpose the statute seeks to achieve. If a later Act merely makes a reference to the earlier Act or existing law, it is only by way of reference and all amendments subsequently made will have effect, unless its operation is saved by section 8(1) of the General Clauses Act or it is void under Art. 254 of the Constitution. It was held in that case that s. 55 of the Act read with the schedule merely incorporated the provisions of the Central Act and so, subsequent amendments to s.6 of the Central Act did not form part of the Adhiniyam and they have no effect on the provisions of the Adhiniyam.



A Similar is the position under the Act.

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 need to be determined applying the principles in s.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 s. 23 of the Central Act would apply to acquisition under the Act, is not enough to hold that what is contained in s. 11-A would also apply. Further, what has been provided in sub-s. (4) of s.126 of the Act is clear indication that failure to make the award within two years from the date of the declaration under sub-s. (2) of s. 126 of the Act, would not render the notification published under s.125 of the Act non-est.

A Full Bench of the High Court recently considered the question as to whether the Amendment Act applies not only to the proceedings which were pending when the amendment was brought into force but also to the proceedings initiated afterwards in *Shiorani v. State of Maharashtra*, (1994) Mh.L.J. 1821; and has opined that it applies to later proceedings also. We are in agreement with the reasoning and the conclusion of the Full Bench, as this is clear even from the opening part of sub-s. (4). Therefore, the Division Bench of the High Court was not right in its conclusion that the Amendment Act would apply only to the pending proceedings.

All the appeals, except Civil Appeal No. 62/92, are allowed; Civil Appeal No. 62/92, however, stands dismissed. The orders and judgments of the High Court in the appeals hereby allowed are set aside. Consequently, the notifications and the declarations which are subject matter of those appeals stand upheld. The authorities would be at liberty to proceed further in accordance with the law. No costs.

V.S.S.

Appeal allowed.