

STATE OF ORISSA
v.
DHOBEI SETHI AND ANR.

A

AUGUST 29, 1995

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

B

Land Acquisition Act, 1894— Sections 4(1), 5-A and 17(4).

Land Acquisition—Notification—Challenge after seven years—Held not permissible—Sale made after issue of Notification—Owner held not entitled to interest.

C

The appellant-State issued a Notification under section 4(1) of the Land acquisition Act, 1894 on July 16, 1970; invoked the urgency clause under section 17(4) dispensing with the enquiry under section 5-A and consequently took possession of the land. Two petitions - one challenging the Notification and the other claiming interest for part of the land pursuant to a sale made after the issue of the Notification were allowed by the High Court.

D

Allowing the State's appeals, this Court

E

HELD: The writ petition having been filed after 7 years of the issue of notification under section 4(1) of the Land Acquisition Act, the High Court ought to have dismissed the same on the ground of laches. Therefore, the High Court has not properly exercised its power under Article 226 of the Constitution in upsetting the notification. The High Court was also unjustified in allowing other writ petition because the petitioner was a subsequent purchaser. [140-F; E]

F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3077-78 of 1980.

G

From the Judgment and Order dated 11.9.80 of the Orissa High Court in O.J. C. No. 43/77 & 1573 of 1978.

Raj Kumar Mehta for the Appellant.

The following Order of the Court was delivered :

H

A Though notice has been served on the respondents, no one has appeared in person or through counsel.

B A notification under s.4(1) of the Land acquisition Act [for short, 'the Act'] was published on July 16, 1970 acquiring Ac. 2.02 dec. of land in Survey Nos. 2309-2316, 2318, 2501, 2506-10, 2530- 32 situated at village Pubakhand for the purpose of construction of the Tahsil office building and staff quarters at Niali. Along with the said notification, the appellant invoked the urgency clause under s.17(4) of the Act dispensing with the enquiry under s.5-A of the Act. The declaration under s.6 of the Act was published on April 27, 1972. Notice under ss.9 and 10 was published in the locality in December, 1975 and possession of the land was taken on December 16, 1976. Sometime in 1977 O.J.C. NO. 43 of 1977 was filed questioning the validity of the exercise of power under s.17(4) dispensing with the enquiry under s.5-A Similarly, some other owners filed O.J.C. No. 1573 of 1978, claiming interest for part of the land pursuant to a sale made after the notification namely in November, 1973. Both the writ petitions were allowed by the High Court on the ground that there was no justification to dispense with the enquiry s.5-A and public purpose would have been served by allowing the claimants to submit their objections.

E As regards the second writ petition, namely, OJC 1573 of 1978, the petitioner therein cannot raise this objection because he is a subsequent purchaser and that the High Court was unjustified in allowing the writ petition.

F As regards OJC 43 of 1977, in view of the fact that the notification was issued as early as on July 16, 1970, the writ petition having been filed after 7 years, the High Court ought to have dismissed the writ petition on the ground of laches. We, therefore, hold that the High Court has not properly exercised its power under Article 226 of the constitution in upsetting the notification dated December 16, 1970 after a lapse of 7 years.

G The appeals are according allowed but in the circumstances without costs.

T.N.A.

Appeals allowed.