HCJ 5/54

Mahmoud Ali Abdallah Haj Muhammad Yunis v. Minister of Finance and Land Registrar, Haifa

At the Supreme Court, sitting as the High Court of Justice

[January 22, 1954. February 19, 1954. February 23, 1954, March 10, 1954]

Before the acting president (Olshan) and justices Silberg, Landau

Land Acquisition (Validation of Acts and Compensation) Law, 1953 [Book of Laws 122, p. 58], sections 2, 2(A), 2(A)(1), 2(A)(2), 2(A)(3), 2(B), 2(C), 2(D) – Minister of Finance's announcement under section 2 of the aforementioned law on August 14, 1953 [Law Gazette 307, p. 1422-1424] – Land Ordinance (Acquisition for Public Purposes) 1943-1946 [Supplement A 1305, p. 32; 1492, p. 153; 1536, p. 225] – Interpretation Ordinance [Laws of Israel, New Version, p. 2], sections 16(A), - Defense Regulations (Emergency), 1945 [Supplement B 1442, p. 855], Section 125 – the granting of a certificate under Section of the Land Acquisition Law 1953 should not be regarded as a judicial-like act – the finance minister does not rule here in a dispute brought before him. Instead, he attests or affirms that certain facts existed, and the granting of a certificate constitutes testimony – when the certificate is granted, the land is automatically transferred to the Development Authority by law, and only the setting of a transfer date has constitutive power – but this does not change the evidentiary nature of what is stated in the certificate under the aforementioned section 2 (A), and this is not the place to apply principles that pertain to judicial-like proceedings – these sections of the aforementioned Land Acquisition Law do not indicate the legislature's intention to grant the landowner an opportunity to voice his arguments before awarding the said certificate, and the minister is not obligated to issue an announcement or invitation to the owners on this matter – there is no support for this in the law, because after the certificate is granted and is published in the records, and the property has been transferred to the Development Authority, the failure to provide stakeholders the possibility of voicing their concerns prior to granting the certificate could be used by the court to reject the said certificate – on the contrary, the legislature's clear intention was that the property would be placed under the Development Authority's control from the date cited by the minister in the certificate, and the legislature did not want any appeal or contradiction of the facts noted in the certificate – in light of section 16 (A) of the aforementioned Interpretation Ordinance and the definition of "regulation" in section 1, where there is room to presume that if the minister discovers that the certificate he issued is based on an error, he will be able to cancel or correct it – the "presumption" in the aforementioned section 2 means a presumption in practice, and not a constructive presumption, which can be challenged if the court accepts the argument that the minister made a legal mistake.

English rulings cited:

[1] *Board of Education v. Rice and ors.*; (1911), A. C. 179.

Israeli rulings cited:

[2] HCJ 103/49 *Yitzhak Turan v. Prime Minister D. Ben-Gurion et al.*: "Rulings" Vol. D, 1950, p. 704, 707; "Rulings" Vol. C, 1950, p. 415.

Opposition to an *order nisi* issued by this court on January 22, 1954, addressed to the first respondent, and requiring him to come and explain why his announcement of August 4, 1953, issued under the Land Acquisition (Validation of Acts and Compensation) Law, 1953, regarding lands of 'Arara village, should not be overturned, and why Respondent No. 2 (the Land Registrar, Haifa) should not be ordered to cancel the registration entered into the property records according to deed 1998/53, based on the aforementioned announcement, in light of the arguments included in sections 12 through 19 of the aforementioned petition. *The order nisi was canceled.*

Ben-Yishai – on behalf of the petitioner; Haim Cohn – on behalf of the respondents

Ruling

The Petitioner owns part of plots 2 and 19 in bloc 12145 of the lands of 'Arara village. In the collection of publications No. 307 of July 28, 1953, the Finance Minister published an announcement from August 14, 1953 in accordance with section 2 of the Land Acquisition (Validation of Acts and Compensation) Law, 1953, in which he testifies that these and other lands of 'Arara village were not held by their owners on April 1, 1952, that they were used and allocated between May 14, 1948 and April 1, 1952 for essential settlement and development needs, and that they are still required for these needs. And consequently, they are being transferred to the ownership of the Development Authority, effective August 14, 1953. Based on this announcement, the Haifa Land Registrar erased the record of previous ownership of these lands, and registered the Development Authority as the owner of the lands on September 8, 1953. The Petitioner turned to this court with a request to cancel the Finance Minister's said announcement and cancel the registration under the name of the Development Authority.

2. A summary of the arguments of Mr. Ben-Yishai, the Petitioner's representative, is that his client was not provided any prior notification of the Finance Minister's intention of issuing a certificate under section 2 of the aforementioned law, and that if his client had been given such notice and had presented his arguments to the Minister, he would have persuaded him that his land had been in his possession on April 1, 1952. The petitioner presented the court with sworn affidavits saying that some of the lands cited in the announcements, including the petitioner's lands, were held by the owners on April 1, 1952.

On the question of the Minister's obligation to give prior notice to the landowners regarding his intention of issuing the certificate under section 2, Mr. Ben-Yishai argued in his oral summary, though not in his petition for an *order nisi*, that the issuance of

the certificate is a judicial-like act and, therefore, the injured party must be given the opportunity to appear and state his arguments.

Section 2 of the law stipulates:

"2. (A) If the minister signs a certificate affirming that a property meets these three [conditions]:

(1) On April 1, 1954, it was not in the possession of its owner;
(2) It was used or allotted during the period of May 14, 1948 to April 1, 1952 for essential development needs, settlement or defense;
(3) Is still required for one of these needs;

It will become the property of the Development Authority, and will be regarded as free of any lien, and the Development Authority will be entitled to take hold of it immediately.

(B) It will become the property of the Development Authority from the date cited in the said certificate; the certificate will only be granted within one year of the day this law takes effect, and will be published in *Reshumot* [the official gazette] as close as possible to the date on which it is granted;

(C) A property assigned to the Development Authority as stated will be recorded in the property records under its name, but failure to record will not detract from the validity of assigning the property to the Development Authority.

(D) A certificate under this section will not constitute an admission that an acquired property is not, or was not, a state property, or that the state has no, or had no, right or benefit in it."

We do not find that granting a certificate is a judicial-like act. The Minister is not ruling in a dispute brought before him, but rather attesting or affirming that certain facts existed. Upon granting the certificate, the land automatically, by law, is transferred to the Development Authority. The granting of the certificate constitutes testimony, as the attorney general argued in his response and as also stated in the written arguments in the petitioner's petition. Only the setting of a transfer date under section 2 (B) has constitutive power, but this does not change the evidentiary essence of what is stated in the certificate under the aforementioned section 2 (A). Therefore, there are no grounds here for using the principles that apply to judicial-like proceedings, cited by this court in HCJ 103/49, "Rulings" D, 704, on p. 707 [2], in line with the English ruling *Board of Education v. Rice* (1911) [1].

3. Mr. Ben-Yishai argued that the Minister was obligated to use his authority to formulate regulations under the law in order to outline ways for hearing arguments from the landowner before issuing the certificate. We do not see that the Minister was obliged to do this. We must interpret this law as it is and ascertain the intention of the legislature from a reading of the aforementioned section 2 and its other sections. We do not discern in the sections of the law any intention of providing the

landowner an opportunity to state his arguments prior to granting the certificate. Section 2 (B), on the other hand, states that the certificate will be published in *Reshumot* as close as possible to the day of its issuance. The purpose of this publication is to enable the landowner to sue for compensation, in money or in other land, in exchange for his land that was taken. From this positive [imperative to publish the certificate] you hear the negative: that the Minister is not obliged to issue a notice or invitation to the owners prior to granting the certificate.

4. Presumably, it would be good if the stakeholders were provided the opportunity to state their case prior to granting the certificate in accordance with section 2 of the aforementioned law. However, we did not find support in the law for this, that the failure to provide such opportunity could serve as grounds for us to declare – after the certificate was granted and published in *Reshumot*, and the property was transferred to the Development Authority – that the certificate is invalid here.

In fact, we are discussing a law of expropriating property that includes a binding directive on awarding compensation, and this law is not unique in lacking a directive on providing stakeholders an opportunity to state their case. In the Land Ordinance (Acquisition for Public Purposes), 1943-1946, for example, the High Commissioner was granted the power to declare the acquisition of certain land as a public objective, and here too there is no directive prohibiting him from issuing such a declaration before hearing the arguments of the party involved. And this fact alone, that no such opportunity was accorded to the party involved, cannot serve as grounds for this court to overturn such a declaration.

5. We also find that the certificate under section 2 is conclusive evidence of the facts stated in it. The legislature did not state this explicitly, but its intention is clear in its stipulation that ownership of the property will be transferred to the Development Authority from the date cited in the certificate. The Minister is entitled to set the date of granting the certificate for this purpose. He did so in this case. In this way, the law denies in advance any practical possibility of challenging the facts cited in the certificate, or of contradicting these facts before the certificate becomes operative and effects the transfer of the property to the Development Authority. This indicates that the legislature did not want any challenge or contradiction of the facts cited in the certificate.

6. Attorney Ben-Yishai notes that the law does not include any provision entitling the Minister to cancel or correct a certificate he has issued, even in the event that he made a factual error or legal error. He deduced from this that in the event of an error, it would not help the petitioner to turn to the Minister, and that we must therefore conclude that the Court is empowered to intervene in order to correct an error that was made.

It is not certain at all that this assumption, which served as a cornerstone of the argument presented by the Petitioner's representative, has legal grounding.

In light of section 16 (A) of the Interpretation Ordinance (New Version) and the definition of "regulation" in section 1 of that ordinance, there are grounds to presume that if the Minister learns that the certificate he issued is based on an error, he will be able to cancel or correct it.

7. The Petitioner's representative argues that the "possession" mentioned in section 2 (A) (1) above does not mean actual possession, but rather constructive possession. And hence, there are grounds to argue that the Minister made a legal error.

Without getting into the question of whether or not we would be permitted to intervene in the event of this sort of legal error, in this case, at any rate, we did not find such an error in the Minister's certificate. Because in regard to the petitioner's land in bloc 12145, we are convinced, after reading the sworn affidavits submitted to us, and hearing the Respondents' witnesses, who were questioned by the Petitioner's representative, that these lands were not in the Petitioner's possession on April 1, 1952. The Petitioner resides in territory recognized as closed under Regulation 125 of the Defense Regulations (Emergency), 1945. The land in question is outside of the closed territory, and it was proven to our satisfaction that the Petitioner was not permitted to exit the closed territory to cultivate this land, and in fact did not cultivate it during that period of time. Mr. Ben-Yishai argued that the Petitioner's possession should be regarded as continuous because no other person has yet taken possession of the land. We reject this argument. In our opinion, "possession" in section 2 above means actual possession. Mr. Ben-Yishai also argued that the Petitioner could have given the land to another person to cultivate, someone with permission to access the land. This may be true, but the Petitioner did not in fact do this and this possibility alone is not sufficient to endow him with actual possession on the determining day.

8. For these reasons, we canceled the *order nisi* and Petitioner's request of February 23, 1954.

There is no order regarding expenses.

Issued today, March 10, 1954