

(2006) 09 AHC CK 0084
In the Allahabad High Court

Abdul Rashid

APPELLANT

Vs

State of U.P., Vice Chairman, Moradabad Development
Authority, Special Land Acquisition Officer and District
Magistrate

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

General Clauses Act, 1897 — Section 21
Land Acquisition Act, 1894 — Section 16, 17, 4, 48

Citation : (2006) 7 ADJ 533

Hon'ble Judges : Pankaj Mithal, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed seeking a direction upon the respondents to restore the possession of the land acquired by the respondents, as it is lying unused since long.

2. The facts and circumstances giving rise to this case are that the a notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter called the "Act") was issued in respect of a huge chunk of land, including the land of the petitioner measuring an area of 0.32 acres. The possession of the land had been taken and Award was made. After an inordinate delay, the petitioner made an application on 27.09.2003 stating that the land so acquired is lying unused, therefore, it may be returned to the petitioner. As no order has been passed on the said application, the petitioner has approached this Court seeking the aforesaid relief.

3. Learned Counsel for the petitioner has submitted that once the petitioner has deprived of his right to livelihood and the land had been acquired without any purpose, he is entitled for restoration of the same and he is willing to refund the amount, if any, received as compensation.

4. Shri P.K. Singh, learned Counsel appearing for the respondents opposed the writ petition contending that once the possession of the land is taken, it vests in

State free from all encumbrances and it cannot be divested under any circumstances, therefore, the petition is liable to be dismissed.

5. We have considered the rival submissions made by learned Counsel for the parties and perused the material on record.

6. The Act provides for a mode of sale and purchase of land between the tenure holders and the State. However, as it is against the wishes of the tenure holder/person interested, the Act provides for solatium etc. There can be no dispute to the settled legal proposition that once the possession of the land is taken under the provisions of the Act, it vests in the State free from all encumbrances, whatsoever, it cannot be divested. The land so acquired cannot be restored to the tenure holder/person interested even if it is not used for the purpose it was acquired or for any other purpose. The proceedings cannot be withdrawn/abandoned under the provisions of Section 48 of the Act or Section 21 of the General Clauses Act, once the possession of the land has been taken and the land has vested in State free from all encumbrances. Vide State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, ; Satendra Prasad Jain and Others Vs. State of U.P. and Others, and Rajasthan Housing Board and Others Vs. Shri Kishan and Others,

7. The meaning of word Vesting" has been considered time and again. In Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, the Hon"ble Apex Court held that the meaning of word Vesting" varies as per the context of the Statute in which the property vests. So far as the vesting under Sections 16 and 17 of the Act is concerned, the Court held as under:

In the cases contemplated by Sections 16 and 17, the property acquired becomes the property of Government without any condition or limitations either as to title or possession. The legislature has made it clear that vesting of the property is not for any limited purpose or limited duration.

8. Encumbrances actually mean the burden caused by an act or omissions of man and not that created by nature.

9. In Abdul Karim Khan and Others Vs. Managing Committee, George High School, , this Court held that encumbrance means a burden or charge upon property or a claim or lien upon State or on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of the land. So far as the provisions of the land acquisition are concerned, the word "encumbrance" means therein is interest in respect of which compensation has been made or could have been claimed. It includes like a lease or a mortgage, securities, servitudes and trust etc.

10. In The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, the Hon"ble Apex Court held that the word "encumbrances" in Land Acquisition Act mean interests in respect of which a compensation was made or could have been

made.

11. In *State of Himachal Pradesh Vs. Tarsem Singh and Others*, the Hon''ble Apex Court held that the terminology "free from all encumbrances" used in Section 16 is wholly unqualified and would include in its compass every right including an easementary right, which affects the land. It includes "all rights, title and interests including easementary rights" and stands extinguished when the title vests in the State. However, in *H.P. State Electricity Board and Others Vs. Shiv K. Sharma and Others*, the Hon''ble Apex Court held that when the land vests in the State free from all encumbrances, it does not include the easementary rights.

12. Thus, "free from all encumbrances" means vesting of land in the State without any burden or charge on it.

13. In *Secretary of State Vs. Amulya Charan Banerjee and Others*, , the Calcutta High Court considered the issue involved herein as to whether after acquisition of the land, it could be put to use for the purposes other than for what it was originally declared and held that "after acquisition, the new owners have the ordinary rights of proprietors and may use their land as they think fit for any purpose, which does not infringe the rights of others and is not inconsistent with the purposes sanctioned by the Statute, under which the land has been taken. In *Maharaja Luchmeswar Singh v. The Chairman of the Darbhanga Municipality* 17IA 90, the Privy Council upheld the using of land for the purpose other than the purpose for which the land had been acquired reiterating the same view. In the said case, the land had been acquired for establishing a public Ghaat but on the part of the said land, a market had been established.

14. In *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, in a similar situation, the Hon''ble Apex Court held as under:

Once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring Authority diverts it to a public purpose other than the one stated in the...declaration.

15. Reiterated a similar view in *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, , the Hon''ble Apex Court held that if by virtue of valid acquisition of land, it stands vested in the State, thereafter claimants are not entitled to restitution of the possession on the ground that either original public purpose is ceased to be in operation or the land could not be used for any other purposes.

16. In *Bhagat Singh Vs. State of U.P. and Others*, the Hon''ble Apex Court held that the land use can be changed by the Statutory Authority after the land vests in the State free from all encumbrances.

17. Similar view has been reiterated in *Niladri Narayan Chandradhurja (d) by*

L.Rs. Vs. State of West Bengal, & Northern Indian Glass Industries v. Jaswant Singh and Ors JT (2002) 9 SC 241.

18. In Government of Andhra Pradesh and Anr. v. Syed Akbar AIR 2004 SCW 7125 the Hon''ble Apex Court considered this issue and held that once the land has vested in State, it cannot be divested either by virtue of Section 48 of the Act nor can re-convey the said land to the person interested/tenure holder and the question of restitution of possession to the tenure holder does not arise. While deciding the said case, the reliance had been placed upon earlier judgments in State of Kerala and others Vs. M. Bhaskaran Pillai and another, ; Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others,

19. In Bangalore Development Authority and Others Vs. R. Hanumaiah and Others, , a similar view has been reiterated by the by the Hon''ble Apex Court placing reliance upon the judgments in Pratap and Others Vs. State of Rajasthan and Others, ; The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others,

20. In view of the above, the law can be crystallized that once the land is acquired and it vests in the State free from all encumbrances, it is not the concern of the land owner as how his land is used and whether the land is being used for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same unless the acquisition proceedings are itself challenged. The State does not have a power to reconvey the land to the person interested nor such a person can claim any right of retribute on any ground, whatsoever.

21. In view of the above, petition is totally misconceived and is accordingly dismissed.