

(2004) 10 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No's. 576 and 863 of 2004

Dattatraya Gopalrao Borkute (Dr.)

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-10-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 48, 5A

Citation : (2005) 2 BomCR 151

Hon'ble Judges : Kamdar S.U., J;Daga V.C., J

Bench : Division Bench

Advocate : V.A. Masodkar and Jawalkar, for the Appellant;

Final Decision : Dismissed

Judgement

Kamdar S.U., J.—By the present two writ petitions, the petitioners are seeking a relief that the land which has been acquired for the purpose of alignment of ring road in the city of Nagpur be released u/s 48 of the Land Acquisition Act, 1894 (hereinafter "the Act" for short).

Brief facts of the case are as under.

The petitioner in Writ Petition No. 576 of 2004 is the owner of Survey No. 58/1-G/4, situated at Somalwadi, Nagpur, whereas petitioners in Writ Petition No. 863 of 2004 are the owners of Survey No. 58/1 GH, 58/5, situated at Somalwadi, Nagpur.

3. On 10-10-1988, notification was issued u/s 4 of the Act, for public purpose of providing alignment of ring road for the city of Nagpur. Petitioners raised objection to the said acquisition by filing their objection u/s 5A of the Act, before the Land Acquisition Officer, Collector Office, Nagpur. They further filed additional objections to the said acquisition proceeding. Ultimately, an award came to be passed on 20th April, 2004 and notice of possession was issued u/s 12(2) of the Act. Being aggrieved by the said award the petitioners preferred reference application before the Collector, Nagpur which has been forwarded to the Civil

Judge, SD, Nagpur. The said reference application was numbered as 2 of 1997 and the same is still pending before the Joint Civil Judge SD, Nagpur. Possession of the land has been taken over by the Collector in pursuance of the acquisition proceeding.

4. It is the case of the petitioners that even after period of 15 years from the date of notification and after 14 years from the date of the award, the respondents have not put the land for the purpose for which it was acquired i.e. Alignment of ring road. Accordingly, the petitioners relying on the Government resolution dated 10-10-1973 applied for return of the land. The petitioners by their letter dated 13-10-2003 made a representation that the land should be released back to the petitioners since the same is not utilized for the public purpose for which the same was acquired.

5. By their letter dated 23-10-2003 the respondents replied to the petitioners that there is delay in carrying out construction to ring road because of delay on the part of the Nagpur Improvement Trust. Accordingly, the petitioners filed the present writ petitions for seeking release of the land based on the Govt. resolution dated 10-10-1973.

6. Petitioners in both the petitions have urged before us relying upon Govt. Resolution dated 10-10-1973 that they are entitled to release of the land because the respondents have not utilised the said land for the purpose of providing alignment to ring road for the purpose for which said land was acquired. On the other hand, respondents have contended that in view of the judgment the Supreme Court in the case of State of Kerala and others Vs. M. Bhaskaran Pillai and another, , the petitioners are not entitled to return of the said land and thus petitioners cannot rely upon the said resolution dated 10-10-1973.

7. It is an admitted position that in the present case land is vested with the State Government because acquisition proceeding is complete and award has been passed and possession of the land has been taken by the respondents for alignment of ring road. It is undoubtedly true that alignment of ring road is not complete and there are various hindrances encountered to the said project. However, the ownership which is vested in the respondent-State Government cannot be divested by virtue of non-completion of, project for which said land was acquired within a particular time. In so far as provisions of Section 48 of the Act is concerned, which provides for release of the land under acquisition. The law is well settled by the judgment of the Apex Court in the case of State of Kerala v. M. Bhaskaran Pillai (supra), wherein it has been held as under:

"In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 6 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the State Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after

the public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provisions of the Act and, is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

8. The aforesaid view is also followed by the Division Bench of this Court in the case of Vishnu Kumar and Others Vs. State of Maharashtra and Others, , in which while considering resolution dated 10-10-1973 of the State Government, this Court has held as under:

"The Division Bench presided over by one of us (R.M. Lodha, J.), in Dilip Narayanrao Jadhav and Anr. v. Maharashtra Rajya Sahakari Dudh Sangh Ltd. and Ors. In Writ Petition No. 6710/2000, on 7th January, 2002, had the same issue concerning release of land from acquisition and restoration of the said land to the petitioner based on Government Resolution dated 10-10-1973 under consideration wherein the Division Bench held thus-

In Gulam Mustafa and Others Vs. The State of Maharashtra and Others, the Apex Court ruled that there is no principle of law by which a valid compulsory acquisition can be voided because the land acquired has been diverted to a public purpose other than the one stated in the declaration u/s 6 of the Land Acquisition Act legal position is well established that it is open to the State Government to use the acquired land for the public purpose other than for which it has been acquired. In the present case, large tract of the land has already been put in public use. The learned Counsel for petitioners heavily relied upon the Government Resolution dated 10th October, 1973 for restoration of the unused and unutilized land. The said resolution is of no help to the present petitioners as we have already observed that expropriated owner had claimed restoration of possession way back in the year 1975 on the ground that the acquired land has not been utilized and used for the purpose for which it has been acquired and had challenged the lease of 20 acres of land to first respondent herein. The said suit was ultimately withdrawn by the expropriated owner before this Court. The self-same plea cannot be raised by the petitioners who claimed to be Mirashi tenant when the expropriated tenant had already withdrawn the suit on that ground. Besides that, on the basis of resolution dated 10-10-1973, in the light of the judgment of the Apex Court reported in State of Kerala and others Vs. M. Bhaskaran Pillai and another, , the petitioners cannot claim restoration of the

land in question. The Apex Court observed thus :

"The question emerges whether the Government can assign the land to the erstwhile owner? It is settled law that if the land is acquired for a public purpose, after public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal of land by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order not in consonance with the provisions of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid."

9. In view of the aforesaid legal position, the validity and legality of the Government Resolution dated 10th October, 1973 is highly questionable and, therefore, its enforcement cannot be sought by the petitioners.

10. In our view, the resolution dated 10-10-1973 cannot empower the State Government to release the land once it is acquired and vested in the State Government, particularly in view of the pronouncement of the judgment of the Supreme Court in the case of State of Kerala v. M. Bhaskaran Pillai (supra) that once land is vested in the State Government, then, as laid down in the aforesaid judgment of the Supreme Court, the land has to be allotted only in the manner prescribed by the Supreme Court i.e. By way of advertisement and inviting applications for allotment of the said land. It is not permissible for the State Government to release the land back to the original owners when their ownership title is divested by virtue of acquisition proceeding and passing award under the Land Acquisition Act, 1894.

11. In that view of the manner we are of the view that the contentions raised in these petitions by the petitioners viz. That they are entitled to released of land as per Government resolution dated 10-10-1973 cannot be accepted. The same is no longer legal and valid resolution in view of the law laid down by the Supreme Court while interpreting Section 48 of the Act. The said resolution does not take into consideration interpretation of Section 48 which the Supreme Court has placed on Section 48 of the Act. In view thereof, and in the absence of any other power to release land in favour of the original owner which has been vested in the State Government, we are of the view that the said G.R. Has no efficacy in law and no relief can be granted to the petitioners placing reliance upon the said G.R. Dated 10-10-1973.

12. In the aforesaid circumstances, we find no merit in the present petitions. The same are dismissed. However, there will be no order as to costs.