
(2002) 07 MP CK 0049
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3330/99

Dilip Kumar Goushalawale and Others	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 48

Citation : (2002) 4 MPHT 514 : (2003) 3 MPLJ 453 : (2003) 1 MPLJ 504

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : R.P. Agrawal and Vishal Shrivastava, for the Appellant; B.N. Mishra, Government Advocate for Respondent No. 1 and Arpan Pawar, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mishra, J.

In this writ petition the petitioner is aggrieved by an order refusing to withdraw from the acquisition of the land which was acquired way back in the year 1988. The order Annexure P-27 has been passed on 7-7-1999 by State Government refusing to withdraw from the acquisition of the land on the ground that possession was taken on 16-9-92 and handed over to M.P. Housing Board. Mutation of M.P. Housing Board has also taken place. Thus, it has been held that it is not possible to denotify the land and withdraw from acquisition u/s 48 of the Land Acquisition Act (hereinafter referred to as "the Act").

Case of the petitioner is that the land in question falls outside zoning plan though the notification u/s 4 of the Act was issued in the year 1988 invoking the urgency clause but houses have not been constructed so far by M.P. Housing Board and the land in question is no more required by them. It is also the submission that order (P-27) has been passed in mechanical manner u/s 48 of the Act rejecting the submissions raised in the representations dated 12-5-98 and 21-9-98. The Minister has also directed as per P-17 and P-22 to submit fresh housing scheme.

Thus, in all fairness considering the facts and circumstances of the case the land in question ought to have been denotified and withdrawn from acquisition. It is also the case of the petitioner that possession still remains with them and has not been taken away.

A return has been filed by respondent No. 2 in which it has been contended that possession of the land was taken as per possession Receipt (R-2/4) on 16-9-92 and lianded over to the M.P. Housing Board. Award Annexure P-12 was passed on 23-5-91. Compensation has also been disbursed. The land absolutely vests in the State Government. It is also the submission that once possession has been taken provision of Section 48 of the Act is not applicable and there is no power to denotify the land once possession has been taken. Respondent No. 1 has also taken the similar stand as that of the M.P. Housing Board.

First submission of the learned Counsel for the petitioner is that the land does not fall in zoning plan. In the instant case acquisition proceedings are not in question but legality of order of refusal to withdraw from acquisition is questioned. The notification u/s 4 and declaration u/s 6 of the Act is not subject-matter of the challenge. Award Annexure P-12 has been passed way back in the year 1992. Compensation stands disbursed. Possession has been taken by the respondents. The mere fact that land does not fall in zoning plan cannot give right to claim withdrawal from acquisition under the Act.

Next submission is about the possession. Petitioner claims that he is in possession of the land. In the matter of land acquisition for taking possession of land acquired, in my opinion, when Panchnama has been drawn and possession has been taken as per possession receipt Annexuer R-2/4 is enough to constitute possession of the State. Presence of petitioner was not required to take possession of land. In my opinion, it is not necessary to state in the receipt that possession has been taken from particular individuals. Petitioner has participated in acquisition proceedings and compensation has been paid. It cannot be said that petitioner is in possession lawfully. Even if he is in possession it is not authorised one. It has to be treated as of a trespasser. Thus, petitioner has no right to claim withdrawal from acquisition as possession has been taken in the year 1992. The Apex Court in Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, held that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession. It has been held in para 4 :--

"4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession It is now well settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking

possession is drafting the Panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."

True it is that order (P-27) is not elaborate but the crux of the matter is that finding has been given about taking over of possession in the year 1992. That by itself is enough to conclude that refusal to withdraw from acquisition is valid and proper. Section 48 of the Act read thus :--

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-- (1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this Section."

Plain reading of Section 48 provides that completion of acquisition is not compulsory if it decides to withdraw. Compensation has to be awarded when not completed. Govt. is at liberty except in the case provided for in Section 36 to withdraw from the acquisition of any land of which possession has not been taken. If possession has been taken Govt. cannot withdraw from acquisition is the proposition laid down in special Land Acquisition Officer v. Gopal & Boya, AIR 1987 SC 224. In any case, averment made in the return is that land is required by M.P. Housing Board, the purpose of housing cannot be said to have become inexistent. Housing is national requirement and a pressing need and allotment of land for construction of houses is requirement of M.P. Housing Board.

Lastly Counsel for petitioner submits that Housing Board should consider the claim of the petitioner for allotment of plots as the houses of petitioners are standing over the land in question. For that petitioner has to apply. M.P. Housing Board who shall consider such claims if made and decide allotment of land as per prevailing terms and conditions.

For the aforesaid reasons, I find no merit in the writ petition. It is dismissed.