
(1991) 10 BOM CK 0053

In the Bombay High Court

Case No : W. P. No. 559 of 1991 with W. Ps. No's. 886 of 1991, 1610, 1609, 2117, 1859 and 1608 of 1990

Ganpat Balaji Parate

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 04-10-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 31A, 31A

Land Acquisition Act, 1894 — Section 4, 4, 5, 5A, 6, 6

Maharashtra Industrial Development Act, 1961 — Section 31, 32, 32(2), 33, 38

Citation : (1991) MhLj 1515

Hon'ble Judges : W. M. Sambre, J;V. A Mohta, J

Bench : Division Bench

Advocate : W. G. Charde, G. M. Joshi, V. C. Daga and R. G. Deshpande, for the Appellant; Govind Mishra, S. G. Charde, P. M. Gundawar, Ms. Khade and S. G. Jagtap, M. P. Badar, for the Respondent

Final Decision : Dismissed

Judgement

V. A. Mohta, J.—Amendments allowed.

By these seven Writ Petitions, is challenged the acquisition of land for the purposes of establishing an Industrial Estate about 25 Kilometers away from the City of Nagpur under the provisions of the Maharashtra Industrial Development Act, 1961 ("the Act"). The total area acquired is over 2.000 hectares covering several villages and involving as many as 800 land owners. The proposed Industrial Estate is reported to be the biggest ever in Asia.

2. By notification under sub-section (1) of section 31 of the Act issued by the State Government on 17-10-1988, Chapter VI of the Act was applied to that area. By notice under sub-section (2) of section 32 dated 16-12-1988. objections to the proposed acquisition were invited by the Land Acquisition Officer. The petitioners filed objections which along with the record and the remarks have been forwarded by the LAO to the Government. The State Government overruled

those objections as in its view they were of extremely general nature and directed the LAO to proceed with the acquisition. Notification under subsection (1) of section 32 of the Act was issued in the Government Gazette on 22nd February, 1989. On that basis, notice under sub-section (5) of section 32 was issued on 21-4-1990 informing the land owners that the land vested absolutely in the Government free from all incumbrances as per sub-section (4) of section 32 of the Act. It is against the above basic background that the validity of the acquisition is to be judged. Since there also exists certain distinguishing features in some cases, we will deal with them group wise.

3. Writ Petitions Nos. 1608, 1609 and 1610 of 1990 can be taken together. They relate to S. No. 17 area 3.40 hectares, S. No. 70A area 5.58 and S. No. 70B area 1.09 hectares, situate at Mouza Turakmari, Tah. Hingna, Dist. Nagpur. On 16-1-1989, the land owners had filed the objections to the acquisition before the LAO. They were heard by the LAO on the next day. The land owners then filed Writ Petitions (W. Ps. Nos. 2050, 2054, 2053, 2055, 2056, 2057 of 1989 and 2058 of 1989) making a grievance about the hearing. The LAO showed his willingness to give fresh hearing, though according to him proper hearing was given. Those petitions were disposed of with the direction to grant hearing once again. The petitioners were heard again on 17-8-1989. The substance of the objections was that:

- i) the lands are unsuitable being flood affected.
- ii) they are fertile and
- iii) some of the petitioners become landless as a result of acquisition.

In these petitions points raised are :

- a) the land owners are entitled to hearing by the LAO as well as by the State Government.
- b) even if only one hearing is contemplated, it has to be by the State Government.

4. Writ Petition No. 1859 of 1990 relates to field Survey Nos. 102 and 109 area 1 H 66 R and 1 H 12 R respectively of Mouza Rengepar. According to the petitioner, he purchased field Survey No. 102 from M/s. Husukle Brothers vide registered Sale-deeds dated 30th July, 1987 and 25th January, 1988. The land was converted into non-agriculture on 2-12-1988 and prior to 3-6-1989 plots were laid in the field. The field Survey No. 109 was purchased from one Ambadkar vide registered Sale-deeds dated 26-2-1988 and 24-11-1988. The land owner entered into an agreement of sale of a part of the property on 10-5-1989. He never received the notices regarding the acquisition but having learnt about the same from other sources, he filed objections on his own accord. He was heard by the LAO. The substance of the objections was that:-

- i) Notices to all the Plot holders were necessary,

- ii) The land was not suitable as it was in the vicinity of the Nagpur Air Port.
- iii) There was no necessity for acquisition, since other Government land was available.

In this petition, the points raised are :-

- a) Sections 32 and 33 of the Act are ultra vires of the Constitution, being violative of Articles 14, 19(1)(g) and 31 A.
- b) Issuance of Notification dated 17-10-1988 under sub-section (1) of section 31 of the Act without inviting objections and hearing the land owners is illegal.
- c) Absence of personal communication of the order rejecting the objections renders the acquisition illegal.

5. W. P. No. 2117 of 1990 relates to approximately 11490 Sq.ft. area of land from Khasras Nos. 114 and 115 of Mouza Rengepar. The fields belonged to the Chandrabhaga Housing Society from whom this portion was purchased by the petitioner on 5-3-1985. The petitioner submitted objections. He was heard. The gist of objections is:

- i) There was no necessity to acquire the land as ample Government land was available.
- ii) The petitioner herself had purchased the property for industry.
- iii) The Industrial Estate is near the Nagpur Air Port and will adversely affect the environment. In the petition, the following points are raised:-

- a) Sections 32 and 33 of the Act are ultra vires of the Constitution being violative of the Articles 14, 19(1)(g) and 31A of the Constitution of India.
- b) u/s 32 of the Act, only the State Government is obliged to hear and consider the objections and this function cannot be delegated.
- c) The proceedings are vitiated in the absence of hearing by the State Government which had taken the final decision in the matter.
- d) Since the petitioner had purchased the plot for industrial purpose, the same should be allotted to her in the Industrial Estate.

6. W. P. No. 559 of 1991 relates to field Survey No. 67 area 3.69 hectares of Mouza Ruikhairi. The petitioner along with four others jointly filed objections on 16-1-1989 through Advocate Muley before the LAO in pursuance of the notice dated 16-12-1988 under sub-section (2) of section 32 of the Act. The Order sheet dated 16-1-1989 shows that Shri Muley was heard on that very day. The petitioner once again filed objections individually on 5-12-1989 after notification under sub-section (2) of section 32 of the Act. The substance of the petitioner's objections was that:

- i) The land is horticultural and fertile for improvement of which the petitioner has

a considerable amount. The points raised in the petition are :-

a) The petitioner was not in fact heard.

b) Having delegated its powers u/s 32 of the Act to the Collector as permissible u/s 42 of the Act and Rule No. 28 of the Maharashtra Industrial Development Rules, 1962 ("the Rules") framed u/s 63, the State Government had ceased to have jurisdiction to take final decision in the matter and since the LAO has failed to take his own decision, the order overruling the objections is vitiated.

7. W. P. No. 886 of 1991 relates to field. Survey No. 16 of Mouza Turakmari admeasuring 3 Hectares 17 R. Objections were filed by the petitioner on 31-1-1989 before the LAO who recommended the dropping the land from acquisition to the State Government. The substance of the objections was that :--

i) Land is flood affected.

ii) It is in one corner of the Industrial Estate and can be easily excluded.

The points raised in the petition are:-

a) There was no justification for not accepting the report of the LAO.

b) He was entitled to hearing also by the State Government.

8. Now, the validity of the Act has been upheld by the Supreme Court in the case of Shri Ramtanu Co-operative Housing Society Ltd. and Another Vs. State of Maharashtra and Others, . The submission that the validity has been decided only on the touch stone of Article 14 and not Articles 19(1)(g) and 31A and hence the matter can be reagitated before the High Court from the angles not argued before the Supreme Court cannot be accepted. Binding effect of the Supreme Court decision does not depend upon whether a particular argument was either advanced or considered therein or not provided that the point with reference to which an argument was subsequently advanced was actually decided. Law on the point is well settled. (See the cases of T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, and Anil Kumar Neotia and Others Vs. Union of India (UOI) and Others,). That apart, we do not see any merit in the challenge. Right guaranteed under Article 19(1)(g) is not absolute. It is subject to reasonable restrictions in the public interest. The Act contains a provision for just compensation and having the Industrial Estate is certainly in public interest. Proviso to Article 31A does not make actual payment of compensation co-terminus with taking possession. Section 38 of the Act provides for payment of interest on the compensation from the date of taking possession. Sub-section (5) of section 33 of the Act mandates the Collector to be guided by relevant provisions of the Land Acquisition Act in determining the amount of compensation and for all these reasons there is no violation of proviso to Article 31A.

9. Our attention was invited to the case of Nagesh Waman Patil and Others Vs. Special Land Acquisition Officer, Bombay, , containing an observation that

normally possession and payment under the Land Acquisition Act is a simultaneous process and hence interest is to be awarded from the time of taking possession. There is nothing in the decision, which supports the contention relating to the validity of the Act.

10. Section 42 permits delegation of powers and functions of the State Government under Chapter VI of the Act to any Officer by rules made in this behalf. Section 63 is a Rule Making power. Sub-clause (h) of sub-section (2) of section 63 deals with the delegation of powers under Chapter VI. Under Rule 28, the power of the State u/s 32 is delegated to certain officers. It is submitted that the power under Chapter VI pertains to judicial functions and therefore, it cannot in law be delegated, does not at all appeal to us. The case of Pradyat Kumar Bose Vs. The Hon"ble The Chief Justice of Calcutta High Court, , upon which strong reliance is placed does not lay down that no judicial tribunal can delegate its function. The case merely lays down that such delegation is impermissible, unless it is authorised expressly or by necessary implication. Section 42 in terms permits delegation and therefore, it is unnecessary to go into the debate about the nature of the functions.

11. Submission that in view of Rule 28 of the Rules delegating the powers u/s 32 of the Act, the State Government cannot exercise them does not appeal to us, considering the uniform policy decision adopted by the State Government on the subject.

The said policy decision is that the LAO is to hear objections as required under sub-section (3) of section 32 after issuing notice under sub-section (2) and to submit the report along with the record to the Government for final orders. The State Government is to take the final decision after going through the entire material including the report.

The above policy decision seems to be in substantial compliance with the letter and spirit of section 32, the Rules and the law relating to the delegation. Very high stakes are involved in selecting the land and hence the policy decision of not leaving the final decision of the LAO appears to be reasonable and in the public interest. Hearing of objections in matters like this is a long drawn time consuming process and hearing by the State would inconvenience the State machinery as well as the public and hence that part of the function is to be performed by the LAO. A golden mean was perhaps sought to be achieved by the above policy decision.

12. Law on the point of retention of authority of the delegatee is slated in the case of Godawari S. Parulekar and Others Vs. State of Maharashtra., , wherein the following observations in the case of Huth vs. Clarke, (1890) 25 QBD 391, have been quoted with approval (Para 6):

"Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself."

13. In this context, learned counsel for the petitioners invited our attention to the case of Mahadayal Premchandra Vs. Commercial Tax Officer, Calcutta and Another, . In that case, Commercial Tax Officer without exercising his own judgment in the matter of assessment asked for instructions of the Assistant Commissioner. The instructions were duly given by the Assistant Commissioner. Commercial Tax Officer did not agree with the opinion contained in the instructions and yet he made assessment on the basis of directions of the Assistant Commissioner. The correspondence between the two was behind the back of the assessee. As a result, appellant was not given opportunity to meet the opinion of the superior authority. In this background the assessment order was quashed on the ground that the entire procedure was contrary to the principles of natural justice and was unfair. The second case to which our attention was drawn is Orient Paper Mills Ltd. vs. Union of India, 1979 (3) SCC76. It relates to Central Excise and Salt Act. The assessment was made not on the basis of the independent judgment of the assessing officer but on the basis of instructions from the Collector. The said assessment order was quashed and matter was remanded to the original authority for writing his own independent judgment. We have noticed the background of these two cases only to point out that the ratio of the above cases will have no application at all to the point involved.

14. Is it a fair procedure to follow that one Officer hears personally and other takes the final decision. The answer to this question cannot be uniform and will depend upon the nature and purpose of the enquiry. If there is a lis between the parties, the function is essentially judicial and law prohibits delegation, this procedure may not be permissible. Functions like deciding suitability of land for a public purpose like establishing an Industrial Estate is not strictly judicial. Delegation of even a part of the power u/s 32 is permissible u/s 42 of the Act. A procedure of hearing by one authority and the decision by the other is not unknown in the laws relating to acquisition. Take for example, sections 4 to 6 of the Land Acquisition Act. It is true that no such provision exists in the Act, but that factor by itself is not decisive in the matter. State Government considers the report of the LAO as well as the material placed on record and hence there is nothing unfair in the procedure.

15. For the same reasons we see nothing unfair in not granting personal hearing once again before the State. After all there is a limited scope in deciding individual objections to the acquisition of land for projects like as Industrial Estate.

16. This takes us to the point relating to absence of personal hearing before issuance of notification under sub-section (1) of section 31. Examination of the provisions of the Act would reveal that though it is in many matters dissimilar to the LA Act, the dissimilarity is not complete and whole. Notification under sub-section (1) of section 31 of the Act is in the nature of notification u/s 4 of the LA Act and at that stage hearing is neither necessary nor feasible. The decision at

that stage essentially pertains to a broad policy matter based exclusively on an expert opinion. Therefore, there is nothing unreasonable and unfair in not granting hearing at that stage.

17. In this context reliance was placed by the petitioners upon some decisions. In the case of *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , it is held that before taking over of an undertaking, under the Industrial Development Act (Regulation), 1961 hearing was a must and sections 18-AA and 81 F of the said Act did not exclude the principles of natural justice. In the case of *Munshi Singh and Others Vs. Union of India (UOI)*, , the land acquisition proceedings were quashed on the ground of vagueness in stating the purpose of acquisition in the notification u/s 4 and the absence of material on record to ascertain the exact purpose of acquisition. In the case of *Ram Charan Lal Vs. The State of Uttar Pradesh*, , it is held that validity of the declaration u/s 6 of the Land Acquisition Act depends on compliance with the requirements of section 5A. Principles of natural justice are not uniform. Ratio of none of these decisions applies io this case.

18. Submission made on behalf of the petitioner in W. P. No. 1859 of 1990 that the notices u/s 32(2) of the Act ought to have been issued to all the Plot holders, even though there is neither actual transfer nor mutation in the official record at the material time, cannot be accepted. This petitioner has in fact filed objections. The so called transferees or occupants have made no grievance on this score. Hence the ratio of the case of *P.C. Thanikavelu Vs. The Special Deputy Collector for Land Acquisition, Madras and Another*, , will have no application.

19. Now, the points relating to merits of the objections to the acquisition. In this area, the scope of judicial review is very limited. No mala fides are alleged. Non-application of mind to the question pertaining to suitability or need for acquisition is not demonstrated. Rightly has the State Government held that objections are too general either to be elaborately considered or accepted. Considerations like fertility of land, improvements made, have little relevance in acquisition for a project like this. Environmental aspects have been taken into consideration, as is clear from the record. Proposed Industrial Estate is 25 Kilometers away from the City. Green belt by planting trees all around the area is being created. Non-suitability of the area because of proximity of the Air Port is essentially a matter of expert study and policy. The case of *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , upon which reliance is placed, only lays down that the Government should be alive to the various considerations pertaining to maintenance of ecological balance.

19A. The petitioner in Writ Petition No. 559 of 1991 submits before us that there was recommendation by some Officer to shift the internal road from his field survey No. 67 to the other field and hence his field should be excluded. We are not inclined to permit that objection to be raised for the first time before us and that too in the course of hearing. Merely because some engineer of MIDC has suggested changes in the internal arrangement, it cannot be said that the

necessity to acquire the land has ceased.

20. The petitioner in the Writ Petition No. 559 of 1991 has made a grievance about his land being wholly unsuitable for acquisition being near the river Vena and therefore likely to be flood affected. In a huge Industrial Estate like this, each and every piece of the land is not intended to be actually occupied by the industrial unit. Provision has to be made for roads, lanes, open space, green belt and several other public amenities. The State Government has taken a stand that keeping ecological considerations in view, this land which is situated in a corner will be used for the green belt.

21. Some of the land owners have made a grievance that they would become landless as a result of acquisition. This position is not admitted. Even if, it is so, the lands cannot be excluded for that reason only in projects like this. In public interest land can be acquired even if, thereby someone is rendered landless. This is not to suggest that that fact has to be ignored. Manual of Land Acquisition contains the following executive instructions:-

"The A.Os. should also take into consideration the effect which the acquisition would have on the means of livelihood of the persons affected by the acquisition and other things being equal, preference should be given for acquisition of lands of those persons who would be the least affected by such acquisition. They should make this point specifically clear while submitting proposal for acquisition to Government."

Reliance was placed by the petitioners upon the decision of Karnataka High Court in the case of Gadigeppa Mahadevappa Chikkumbi Vs. State of Karnataka and others, , wherein considering the purposes of acquisition and the background of that case the High Court quashed the acquisition for not considering the objections of the small land owner on that count.

22. The petitioner in Writ Petition No. 559 of 1991 has also made a grievance that no hearing was in fact granted by the LAO to him. As per endorsement in the Order sheet dated 16-1-1989, Shri Muley, Advocate for the Joint Objectors was heard. His grievance appears to be altruistic. No other joint objector has made this grievance. It is pertinent to note that, the Order sheet dated 16-1-1989 is not the last. Order sheet is further written on nearly three future dates. It is true that in the written joint objection dated 16-1-1989, the objectors had prayed for opportunity to lead evidence, but it appears that the said prayer was not pressed on that date. No affidavit of Shri Muley is filed. Notice inviting objection, no doubt mentions that the objectors can meet the LAO during the time specified in the Notice. But this does not mean that hearing cannot take place on the very day. On the original objections also endorsement about hearing on 16-1-1989 exists. Photostat copy sent to the State Government does not bear that endorsement and on that basis, it is stated that the LAO has indulged into interpolation subsequently with a view to make a show of hearing. In the whole background it is not possible to draw this extreme inference.

23. It is true that neither the LAO nor the State Government has passed a detailed speaking order, but it does not appear that that aspect has in any way prejudiced the petitioners. The objections were too general in nature and did not call for detailed reasoning. After all, there cannot be any standard formula for an order overruling the objections to the acquisition. Personal communication of the decision is also not warranted by law and hence the respondents cannot be faulted on that account.

24. It is true that the LAO had recommended exclusion of the land of the petitioner in W. P. No. 886 of 1991 on the ground that it was likely to be affected by flood. The State Government was not bound to accept the said report. It has given reasons for not accepting the same. The reason is that the land can be included in the green belt to be created around the Industrial Estate. We see no illegality in the decision.

25. In the result, we find no substance in any of these petitions. They are dismissed and the Rules discharged. No costs.

26. Needless to mention that the interim orders stand vacated. Oral prayer for continuation of interim order is rejected.