

(2002) 10 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No's. 5148 to 5153 and 5158 of 2000

Haribhau Bhika Kumkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-10-2002

Acts Referred:

Maharashtra Project Affected Persons Rehabilitation Act, 1986 — Section 14(4), 14(5)

Citation : (2003) 3 MhLj 38

Hon'ble Judges : V.K. Tahilramani, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.T. Shelke, for the Appellant; M.N. Deshpande, P.R. Patil, S.S. Autade, K.B. Choudhary, D.V. Tele and P.B. Vikhe, A.G.Ps., for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—Heard Shri Shelke, learned Counsel for the petitioners and the learned Assistant Government Pleaders for the respondents.

Rule. The learned Assistant Government Pleaders waive service for the respondents. Rule is made returnable forthwith and taken up for final hearing by consent of the learned Counsel for the parties.

2. All these petitions raise a common issue i.e. restoration of unutilised land acquired for the rehabilitation of the project affected persons on the basis of the Government Resolution dated 10-10-1973 as it has not been utilised for the purpose for which it was acquired since last more than 27 years and, therefore, they are being decided by a common judgment.

3. Some portion of the agricultural land belonging to the petitioners was acquired by the State Government for rehabilitation of the persons affected by the Adhala Irrigation Project and the award came to be passed on 10th March, 1977. The area of the land acquired from each of the petitioners is shown in the following table :

Sr. No. Writ Petition No. Petitioner's name Area hectare/are

1. 5148/2000 Haribhau Bhika Kumkar 00.53

2. 5149/2000 Eknath Patilba Wakchoure 02.04

3. 5150/2000 Ramdas Dashrath Ambre 02.02

4. 5151/2000 Balu Anna Wakchoure & Ashok Anna Wakchoure 03.45

5. 5152/2000 Balam Kankar Inamdar 00.94

6. 5153/2000 Ganpat Bhanudas More 01.72

7. 5158/2000 Eknath Tukaram Ambre 00.72

4. Subsequently mutation entries came to be effected for the subject lands, in the name of the State Government, on or about 27th August, 1983. The petitioners came before us in 3 different sets of Writ Petitions i.e. W.Ps. No, 3401/2000 & 3410/2000 (decided on 10th August 2000) W. Ps. No. 3433/2000 and 3438/2000 (decided on 11th August 2000) and W. Ps. No. 3847/2000, 3848/2000 & 3849/2000 (decided on 18th September 2000) contending therein that all of them had submitted representations to the Collector, Ahmednagar, requesting him to return the acquired land as it was not utilised for the purpose for which it was acquired and they were still in possession of the said land and cultivating it. These representations were purportedly based on the Government Resolution dated 10-10-1973. These petitions were disposed of by us directing the Collector to decide the pending representations on their own merit and in keeping with the Government policy, as expeditiously as possible and preferably within a period of two months from the date of receipt of the writ from this Court. Accordingly, the Collector, Ahmednagar, passed an order on 27th November, 2000 and rejected the representations for restoration of the acquired land to the petitioners i.e. the original owners. Hence these petitions.

5. Shri Shelke, the learned Counsel for the petitioners, referred to the Government Resolution dated 10-10-1973 and more particularly to Clause 2(11) of the said Resolution and submitted that if the acquired land is found surplus and/or unutilised for a period of six years, the land is required to be restored to the original owner by the Collector as per the said policy decision of the State Government and once the State Government has formulated a policy, it must be acted upon and the Collector has no alternative but to return the agricultural land to the original owners. He, also submitted that in the instant case, though the award has been passed way back in March 1977, each of the petitioners has been in possession of the acquired land since last about 25 years. The learned Counsel relied upon the decision of the Apex Court in the case of Savitri Devi Vs. State of Haryana and Others, , as also in the case of Tulsi Co-operative Housing Society, Hyderabad, Etc. Etc. Vs. State of Andhra Pradesh and Others Etc. Etc., . He has also referred to an unreported decision of this Court (Nagpur Bench) in W. P. No, 85/86 dated 9-10-1990 Krishnakumar Vithalrao Jamadar v. State of

Maharashtra & others, as also in the case of Maharashtra State Electricity Board Vs. State of Maharashtra and others, and in the case of Ramakant Vithobaji Gaikwad Vs. Government of Maharashtra and Others, . Lastly, he referred to yet another decision of this Court in the case of Dilip Narayanrao Jadhav and Anr. v. The Maharashtra Rajya Sahakari Dudh Sangh Ltd. and Ors. (W.P. No. 6710/2000 dated 7-1-2002 reported in. 2002 (5) Mh.LJ. 296 and submitted that there being a conflict of opinion between two Division Benches, there is a case made out for referring the issue to a larger Bench regarding the right of the land owners based on the Government Resolution dated 10-10-1973 and the validity of the same Government Resolution.

6. A return has been filed by the District Resettlement Officer, Ahmednagar and it has been pointed out that after the award was passed on or about 10th March 1997, the compensation amount to each of the land holders was offered, but it was not accepted by them and, therefore, it came to be deposited in the Revenue Provincial deposit. It has been further stated that the land was acquired under the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (for short "Act of 1976") for the rehabilitation of the persons affected by the Adhala Irrigation Project in Akola taluka of Ahmednagar district and it could be utilized for rehabilitation of the persons affected by any other project on the basis of the provisions of Section 14(5) of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 (for short "Act of 1986"). It is further stated by the respondents that the Government Resolution dated 10-10-1973 is not applicable to the lands acquired under the Resettlement of Project Displaced Persons Act more so because the land has been acquired from the benefited zone as per the slab system in existence at the relevant time. It has also been admitted that though the award has been passed in 1977, the respective petitioners are in possession of the subject land and the petitioners have been labelled as encroachers specially after the land was mutated in favour of the Government after its possession was taken over on or about 5th August, 1983. Be that as it may, the fact remains that each of the petitioners has been in possession of the subject land even after the possession panchanama was drawn in August, 1983.

7. In the case of Krishnakumar v. State of Maharashtra and Ors. (W.P. No. 85/86 decided on 9-10-1990 -- Nagpur Bench), the subject land, which was directed to be restored on the basis of the Government Resolution dated 10-10-1973, was not acquired for the resettlement of project affected persons. Similarly in the case of Maharashtra State Electricity Board (supra), the land was acquired by the State Government for the purpose of the Board and part of the land purportedly remained unutilised thereby attracting clause No. 2(111) of the Government Resolution dated 10-10-1973. In the case of Ramakant Vithobaji Gaikwad (supra), this Court referred to the subsequent Government Resolution dated 19-08-1974 which came to be issued for further clarification of the earlier Government Resolution dated 10-10-1973 and held that the earlier Resolution dated 10-10-1973 was not applicable to the lands which were subsequently liable to be used for commercial or industrial area or such other non-agricultural

purposes, as were not connected with agriculture or had gained non-agricultural potentiality. In the instant case, the acquired land was for the rehabilitation of the project affected persons and the rehabilitation would include both shelter as well as livelihood and it could not be definitely now stated that the land was acquired only for agricultural purpose and, therefore, the first issue would be whether the said Resolution dated 10-10-1973 could be made applicable to such a case.

8. Notwithstanding this position, we may also refer to the provisions of Section 14(4) and (5) of the Act of 1986, which reads as under:

"14(4) For the purpose of rehabilitating affected persons from the affected zone under an irrigation project, including those under any irrigation project who have remained to be rehabilitated, on land, the State Government may acquire land from holdings in the benefited zone of the project according to the slab declared in the notification under Sub-section (1) of Section 13 and may also acquire, where necessary, land from any other village or areas, as it may deem fit.

14(5) All lands acquired under this section shall form part of the land pool."

9. Shri Shelke, the learned Counsel for the petitioners submitted that the provisions of Section 14(4) and (5) of the Act of 1986 cannot be relied upon as the subject land was not acquired u/s 14 of the said Act. Shri Shelke may be justified in his submission, but the petitioners cannot come out of the clutches of Section 14(4) which specifically empowers the State Government to utilise the land earlier acquired for rehabilitation of persons affected by "any other project" and unless the petitioners demonstrate that they had submitted their representations prior to the Act of 1986 was brought into force. Even in the earlier batch of writ petitions which was disposed of by us in August/September-2000, such representations were not brought on record and it was merely stated that common representations were submitted to the Collector for restoration of the land on the basis of the Resolution dated 10-10-1973. Even in these petitions, copies of the said Resolutions have not been placed before us. The State Government is right in its contentions that the land acquired for rehabilitation of persons affected by a particular project could be utilized by the State Government for rehabilitation of persons affected by "any other project" (Irrigation Project) and in this regard, the State Government is supported by an earlier decision of the Apex Court in the case of Gulam Mustafa and Others Vs. The State of Maharashtra and Others, , wherein it was stated that 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 Section 6(3) declaration.

10. The observations made by a Division Bench of this Court in the case of Dilip Narayan Jadhav (supra) regarding the State Government's power to issue the Resolution dated 10-10-1973, were based on the observations made by the Apex Court in the case of State of Kerala and Ors. v. M. Bhaskaran Pillai and Anr.,

reported in (7977) 5 SCC 432 in which case, the land to the extent of 1.94 acres was acquired in 1952 for construction of National Highway and the construction was completed in 1955. However, out of the acquired land, 80 cents of land was used and the balance land remained unused. The original land-owner approached the State Government by proceedings dated 21-12-1979, he was allowed to dispose of the property on the basis of the executive order passed by the Government granting permission for alienation of the land. The validity of the executive order passed by the State Government was challenged before the High Court of Kerala and the said executive action was declared to be invalid in the light of the Kerala Government Land Assignment Act, 1960. Upholding the view taken by the Kerala High Court, the Supreme Court stated thus :

"In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a 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 provision 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."

11. We are, therefore, satisfied that there is no issue that arises for consideration by the larger Bench of this Court and there does not appear to be any conflict in the opinions, so expressed, by different benches of this Court.

12. So far as the petitioners are concerned, there is no dispute that the subject land was acquired for the rehabilitation of the project affected persons and Resolution dated 10-10-1973 was issued when the 1976 Act as well as 1986 Act were not on the statute book. The State Government has the right to utilise the land acquired for rehabilitation of persons affected by a particular project to the persons affected by any other project and, therefore, we further hold that the Government Resolution dated 10-10-1973 cannot be applied for such lands and more so in view of the provisions of Section 14(4) and (5) of the Act of 1986.

13. In the result, the claim made by the petitioners fails and the petitions are dismissed. Rule discharged. No order as to costs.