

(1976) 02 BOM CK 0034

In the Bombay High Court

Case No : Spl. C. Application No's. 1751 with 1790, 1805 and 1842 of 1976

Jagannath Marotrao Gavande and another

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 12-02-1976

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 14(3), 21, 33

Civil Procedure Code, 1908 (CPC) — Section 33

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 17, 18, 18, 19, 19

Mamlatdars Court Act, 1906 — Section 21

Citation : (1976) MhLj 247

Hon'ble Judges : B.A. Masodkar, J

Bench : Single Bench

Advocate : C.C. Madkholkar with D.K. Deshmukh and A.M. Gordey, H.N. Deshpande, for the Appellant; R.R. Deshpande, Hon. Assn. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

B.A. Masodkar, J.—In the wake of accelerated ameliorative economic measures relating to the equitable distribution of agricultural lands That exceed the ceiling limit, the original Act, i.e. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, has undergone several swift amendments in the year 1975. Under the amended provisions of section 2A, Tribunals have been constituted for the purposes of holding enquiry and further determining the surplus holding and for taking steps to possess and distribute lands. These Tribunals have been clothed with powers u/s 44A formerly possessed by the Collector to proceed to take possession of the land as is provided for by section 21 (2) The provisions of section 21 (4) declare that such surplus land would stand vested in the State with effect from the date on which the possession of the land is taken and the scheme permits distribution of the surplus land under Chapter VI of the statement. Under the amended provisions the basic structure of the law has not

been materially affected except that there is legislative emphasis on speed in determination of the causes and necessity to distribute the land to those who are entitled to the benefits thereof under the provisions of the law. It may be stated before reference is made to the grievance in these petitions that the structure of the law remains in the same procedural gamut without any radical departure, in that it postulates the need of filing returns, serving notices, holding enquiries into the statutory issues and making declarations. The matters are enjoined to be considered u/s 18 and are enumerated even under the present provisions and those include matters with regard to the total area of land held by the holder on 26th September 1970 as well the transfers which should be ignored and other similar matters which are statutorily raised in the shape of questions to be answered by the authority. After the matters are considered u/s 18 and if there be any dispute between tenant and landlord, the question is adjudicated u/s 20; the Collector or the Tribunal is required to make declaration u/s 21 (1) as to (a) the total area of land which a person or family unit is entitled to hold as ceiling area; (b) as to the total area of land which is in excess of the ceiling area; (c) the name of the landlord to whom possession of the land is to be restored u/s 19 and the area and particulars of such land; (d) the area, description and full particulars of the land which is delimited as surplus; and (e) the area and particulars of land out of surplus land, in respect of which the right, title and interest of the person or family unit holding it is to be forfeited to the State Government. In all these matters indicated by clauses (a) to (e) of sub-section (1) of section 21, the Collector has to make a declaration. Upon this basic declaration which is obligatory to be announced, in the presence of the holder and other persons interested who are present at the time of that declaration is made further statutory results are indicated. The basic requirements of the notice, the enquiry and the declaration to be made have not been in any way affected by any of the amendments. The scheme of section 21 further shows that after the declaration is made under sub-section (1), steps regarding taking possession of the surplus land are required to be taken by the Collector or the Tribunal exercising its powers. Sub-section (4) indicates that upon taking this possession and from the date on which possession is taken, the land has to be deemed to have been acquired by the State Government for the purposes of the Act and it stands vested in the State Government. However against the declaration so made, with regard to matters mentioned in clauses (a) to (e) of sub-section (1) of section 21, an appeal is provided expressly by section 33(1) (2) .

2. Sub-section (3) of section 21 around which much of the controversy in these present petitions has eventually centred in terms treats the declaration earlier rendered final subject to appeal u/s 33 (1) to Maharashtra Revenue Tribunal or revision provided for u/s 45(2) . A little later on that provision will be closely examined.

3. Turning to the petitions with this background of law, all these petitions raise an interesting and important question to be determined as to the effect of filing

of the statutory appeal before the Maharashtra Revenue Tribunal against declaration under sub-section (1) of section 21 and the power of that Tribunal with regard to matters of stay of further proceedings which are indicated by sub-section (2) of section 21, sub-section (4) of section 21 and by section 27, i. e. possession, vesting and distribution of surplus land.

4. It is not necessary to consider the facts in each case suffice it to observe as is not in dispute that the petitioners in each of these petitions have filed the returns and their cases were decided by the Tribunals respectively after holding enquiry as required by section 18 and declarations were made by the Surplus Land Determination Tribunal u/s 21 (1) (hereinafter referred to as Surplus Tribunal) and orders of those Tribunals are annexed to each of these petitions as Annexure-A. By those orders against each of the petitioners, declaration is made that they are surplus holders and they hold surplus land, that is to say, in Writ Petition No 1751/76 to the extent of 7 acres 20 gunthas, in Writ Petition No. 1790/76 to the extent of 27-77 acres, in Writ Petition No. 1805/76 about 9-00 acres and in Writ Petition No. 1842/76 about 5 acres 18 gunthas.

5. It is also not in dispute that all these petitioners have preferred their respective appeals as is evidenced by the annexure being the appeal memo in each case within the time prescribed by section 35 of the Ceiling Act. The appeals are entertained by the Maharashtra Revenue Tribunal (hereinafter referred to as the Revenue or Appellate Tribunal) in that the same are not dismissed in motion hearing. However in each of these petitions, it appears, the petitioners moved separate applications for interim stay of further proceedings and in each case by the impugned order the Revenue Tribunal has rejected that prayer, however, keeping alive the appeal before itself.

6. In Writ Petition No. 1805/76 no reasons are given why the stay is refused. In Petition No. 1842/76 stay is refused because the contention is about the potkharab land. In Petition No. 1751/76 stay is refused because the landholder was contending for the validity of a partition and in Petition No 1790/76 stay is refused because the appellant was trying to set up the partition of 5th June 1970. As the stay is refused in all these cases, the petitioners complain that inspite of the appeals entertained by the Revenue Tribunal, they would be divested of their property u/s 21 (4) and further the property shall pass not only to the State but eventually would be distributed to several persons and their appeals in fact could be rendered infructuous. Thus presently they feel aggrieved by these interlocutory orders.

7. Apart from the ends of justice, balance of convenience and the necessity to maintain status quo during the pendency of the appeals, it is urged on behalf of the petitioners that upon true construction of the provisions of appeal and particularly the provisions of section 21 (3) , it would appear that as soon as the appeal is filed the declaration u/s 21(1) is put in Jeopardy; in other words, there is no finality to the order made by the Collector and the presentation of the appeal should in law operate as stay of further proceedings. It is contended that

unless such a construction is placed on the express terms of the statute, valuable rights which may eventually be upheld by the Revenue Tribunal would be lost and the very purpose of the providing for an appeal would be rendered infructuous. I was taken through several of the provisions of the Act as well as the Rules to indicate the legislative anxiety that a person subjected to the process of this law should have the full and complete opportunity of adjudicating his grievance and then and then only should be deprived of the surplus determined according to law. It is contended that appeal under the present statute is a continuation of the enquiry and lies against all the matters mentioned in sub-section (1) of section 21. If that be so, the provisions of subsection (2) or provisions of sub section (4) of section 21 would not be available once an appeal is filed and entertained. Reference was made to the Rules called Maharashtra Agricultural Lands (Lowering of Ceiling or Holdings) (Distribution of Surplus Land) Rules, 1975 (hereinafter referred to as Distribution Rules) to indicate how the distribution procedure is regulated by those Rules and how the presentation of appeal affects that procedure.

8. On behalf of the State, learned counsel submits that sub-section (3) of section 21 read with section 33 would indicate that the finality attaches to the order made by the Collector under sub-section (1). Even assuming that finality attaches to the order made in appeal, it is incorrect according to the learned counsel, to treat that the presentation of appeal or filing of it operates as stay of further procedure indicated by sub-section (2) of section 21 or the stage of sub-section (4) of section 21. Reliance is placed on the Maharashtra Revenue Tribunal Rules and Regulations and power of the Revenue Tribunal to pass Stay Orders in appeals. Alternatively, it is submitted that under subsection (3) of section 33 the CPC governs the exercise of the powers by the Revenue Tribunal in the matters of appeal and, therefore, the declaration contained in Order 41, rule 5, that presentation of appeal does not operate as stay should be extended to the appeals under the Ceiling Act. It is further contended on behalf of the State that these are discretionary matters and expressly under the Regulations the Tribunal having the power to reject the stay, the petitioners are not entitled to any relief.

9. It would thus appear that much of the controversy centres on the interpretation and the effect of the provisions with regard to presentation of the appeal and its legal consequences. If the presentation of appeal has the effect in postponing the steps required to be taken by the statute, in that taking of the possession followed by vesting and distribution, then it follows that during the pendency of the appeal there would be stay of those steps.

10. To understand the exact conspectus of the provision, I propose to quote sub-section (3) of section 21 which reads as follows :

21. * * *

* * * *

(3) The declaration made under this section, subject to the decision of the

Maharashtra Revenue Tribunal in appeal u/s 33, or of the State Government in revision under sub-section (2) of section 45, shall be final and conclusive, and shall not be questioned in any suit or proceeding in any Court.

(Emphasis Provided)

The plain reading of the provision indicates that the finality to the declarations is subjected to the decision of the Maharashtra Revenue Tribunal or to the decision of the State Government first in appeal and the latter in revision. The emphasis that it should be so subjected cannot at all be missed and it may be mentioned that by Amending Act 32 of 1965, the words were specifically added in the body of sub section (3). When the Legislature uses the phraseology making declarations final and conclusive subjecting it to the orders to be made in appeal or revision, it appears plain intention that would be decided in appeal or revision will be final adjudication of rights of the parties. The word ""conclusive" has been specifically added to emphasize that the declarations can be only challenged by the modality indicated by law, i. e. either preferring an appeal or if the conditions of section 45 (2) are available by the modality of filing a revision application. It is well settled that such appeals by the very nature of things are the extensions of the original proceedings; nay they are the continuation thereof. In other words, whatever the original authority could do is capable of being done subject to any limitation statutorily placed upon the appellate authority. Sub-section (3) permits the appeal against the declaration made by the Collector under sub-section (1) of section 21. It is significant that under sub-section (1) similar phrase occurs which enjoins upon the Collector "to make a declaration." The process appears to be one of making judicial order with regard to matters specified in clauses (a) to (e) under sub-section (i) of section 21. The Collector, under sub-section (i) has to make declaration and then proceed to announce the same. These stages are separately indicated in the phraseology of sub-section (i) itself. Against the making of the declaration the appeal lies, and section 33 (i) (ii) indicates that any part of that declaration can be subjected to appeal. Therefore, there is no doubt that the provisions of sub-section (1) and (3) of section 21 are to be read together and by the process of adjudication contemplated therein eventually a final declaration in the sense that adjudication of the rights of the parties with regard to the matters in clauses (a) to (e) is finally and conclusively achieved.

11. Reference to sub-section (2) was made on behalf of the State along with sub-section (4) of section 21 to point out that inspite of the finality given to the declaration under sub-section (3), the Collector can proceed and land can vest in the State Government in other words it is submitted that though appeal may be filed, there is no bar for the Collector to take proceedings for entering upon possession and thus legally vesting the land in State. From this the argument is the appeal would not operate as stay.

12. For appreciating all these submissions and this approach, the provisions of sub-section (2) and sub-section (4) of section 21 will have to be closely considered. Sub-section (2) is enabling in its nature and executory in its purpose.

It permits the Collector by following the procedure prescribed to prepare the statement and exhibit it at the village Chawadi as well sending the copy thereof to the interested persons and where there is case of forfeiture, it states that the property forfeited shall stand vested in the State and further prohibits making of certain transfers. After an Explanation there is a proviso which operates in the cases of tenancy or with regard to surplus lands under any other law or other such matters. Thus excepting the cases of forfeiture where vesting takes place on the date of the announcement of the declaration and imposing bar for transfers, sub-section (2) in other cases enjoins a procedure preliminary to take possession. Sub-section (4) requires the Collector to take possession after announcement in the prescribed manner of the delimited surplus land as well restore possession to the landlord who is held entitled to resume certain lands having reference to sub-section (1) (c) of section 21. Latter part of subsection (4) proceeds to declare that from the date on which the possession is taken in the prescribed manner, the State Government is deemed to have acquired the land for the purposes of the Act and it shall vest without further assurance and free from all encumbrances in the State. Land covered by proviso to sub-section (2) is liable to vest after the proceedings mentioned in sub-section (2) terminate.

13. This shows that upon declaration the statute does not make it possible the legal effect of divesting the landholder of his property and vesting it in the State Government. Declaration more or less is an independent stage on the basis of which the Collector is authorised in the prescribed manner to enter upon the land and take possession. It is only after the possession is so taken, the law declares that the land stands acquired by and vests in the State. It is obvious therefore that to achieve this far-reaching legal effect there must be a final and conclusive declaration. It cannot be conceived that a declaration which is liable to be reversed under the provisions of the very same Act will enable the Collector to take such serious steps of divesting the persons of their estate and further entering upon its possession and enjoyment and State getting the rights of acquisition for the purposes of this Act leading unto its distribution. Looking to the whole scheme of section 21 it appears reasonable to hold that excepting the declarations regarding the forfeitures, all other matters of declaration must await final decision in case an appeal or revision is preferred. In other words, though sub-section (2) opens with the words "after a declaration under sub-section (1) is made," the Collector may proceed to take steps to enter upon the surplus land for taking possession, on the nature of things the declaration under sub-section (1) is meant the declaration that is final and conclusive under sub-section (3). The effect of filing the appeal u/s 33 is obviously to put the declaration in jeopardy to the extent the appeal challenges either the whole or part of the declaration. There is no reason to exclude the doctrine of applying legal maxim of res subjudice to the proceedings under subsection (1) read with subsection (3). On the other hand that would further the obvious intent of the Legislature in providing the remedy of appeal to an aggrieved party.

14. The phraseology of sub-section (3) of section 21 which makes the declaration

final and conclusive subject to appeal or revision indicates that till the final decision of the appeal the matters are treated subjudice.

15. This Court had an occasion to consider similar phraseology available in the provisions of section 14 (3) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act of 1944 and a Division Bench of this Court in *Indra Singh Vs. Shiavax Cawasji Cambata*, relying on the Privy Council decision in *Annamalay Chetty v. B. A. Thornhil* A I R 1921 P C 203 and *Nilvaru v. Nilvaru* I L R 6 Bom. 110 found that once the appeal is filed, the finality of the order made by the original authority disappears and it is the decision of the appellate authority that becomes final and operative. The principle underlying that decision equally applies to the provisions of sub section (3) of section 21. In other words, once the appeal is filed u/s 33 the declaration made by the Collector under subsection (1) to the extent challenged in appeal loses its finality and it will be the decision of the Maharashtra Revenue Tribunal, i. e. the appellate authority, which would become final and operative and there upon under sub-section (2) and sub-section (4) the Collector will have to work out or give effect to that decision.

16. It was contended for the State that sub-sections (3) and (4) have been recasted by the Amending Acts and there is departure from the earlier scheme, in that before the amendment under sub-section (4) there was express mention that Collector would proceed to take possession after final decision in appeal revision. The deletion of that clause, however, does not affect the provisions of sub-section (1) and sub-section (3), for, inspite of such a clause, it would be obvious that finality and conclusiveness is attached to the ultimate order that can with jurisdiction be made by the authorities created by the statute.

17. Reference to rules, i.e. the Distribution Rules above stated and particularly sub-rules (2) and (3) of rule 7 would indicate that the authorised officer is precluded from handing over the possession of the lands to the allottees if it comes to his notice that any land included in the final statement has not been finally declared surplus land of in an appeal, appellate authority or competent authority had issued a stay against the distribution proceedings. This sub-rule (3) by itself indicates that even the rule making authority contemplates final declaration of surplus land and receipt of orders from the appellate authority against distribution proceedings. That obviously shows that if the authorised officer is appraised of the fact that there is no final declaration of surplus land, the rule contemplates a stay by him with regard to handing over of possession of the land in favour of the allottees. If the possession has already been taken, the rule contemplates clearly that further distribution proceedings can be subjected to stay by the appellate or any other competent authority and the authorised officer is enjoined to obey those stay orders. Scheme of sub-rule (3) is clearly indicative of the intention underlying the remedy of appeal and its legal effect on further proceedings in that once it is brought to the notice of the authorised officer that there is no final declaration with regard to the surplus land, he is disabled to hand over the possession to the allottees. That itself shows that once

the declaration with regard to surplus land made by the Collector or surplus land Tribunal under sub-section (1) is subjected to appeal under sub-section (3), all further proceedings must await the result of such an appeal.

18. The provisions regarding the appeal may briefly be noted to find out whether there is any substance in the submissions of the State drawing support from the Regulations and Order 41, Rule 5 of the Code of Civil Procedure. Appeals are the creation of the statute. They are to be provided by the substantive law. There is a distinction between the procedure in appeals and the appeals themselves and right thereto. It is from the provisions of a given statute the Court is required to find out whether the appeal provided is a continuation of the initial proceeding or it is merely a supervisory form that is enacted for. As stated earlier, in the contemplation of the ceiling law and particularly in the structural part of section 21, reading sub-sections (1) and (3) together, appeal has been provided as a continuation of the original proceeding initiated either upon notice or upon filing of the return. The matters of declaration mentioned in sub-section (1) (a) to (e) can be effectively reviewed and adjudicated upon in the process of these appeals. Provisions of section 33 with regard to appeals u/s 21 thus create a substantive form of judicial review. The jurisdiction, therefore, is conferred in favour of the Maharashtra Revenue Tribunal by the plenary provisions of section 33 and not by the Regulations nor by the Code of Civil Procedure, sub-section (3) of section 33 merely deals with the procedure and not with the jurisdiction of the Appellate Tribunal. Relying upon sub-section (3), the procedural part of the CPC may be available for appropriate exercise of the power which flow from sub-section (1) of section 33. It is not left to doubt as to what power the Tribunal can effectively exercise in exercise of its appellate jurisdiction. Section 34 declares that the appellate Tribunal may confirm, modify or rescind the decision, order, declaration or award which is brought before it u/s 33. Section 35 make a special provision with regard to limitation for appeals. Thus the format of sections 33, 34 and 35 indicates a self contained creation of jurisdiction permitting judicial review by the higher Tribunal over decision which are enumerated in sub-section (1) of section 33. Its scope cannot be enlarged not can be curtailed by reference to the Regulations or to the Code of Civil Procedure.

19. Even the declarations of the statute which permit appeals may in given cases indicate that once the appeal is filed the whole matter become res subjudice and the order subjected to appeal loses its finality and conclusiveness. That should be the normal effect of providing for effective judicial review by the appellate Court. To avoid the doctrine of jeopardy as well as clarify sometimes the principles of merger, provisions are enacted which declare, as is done by rule 5 of Order 41 of the Code of Civil Procedure, that filing of appeal shall not operate as stay. It is a matter of intention of the statute to be gathered from several provisions and particularly in want of any such declaration to infer whether filing of an appeal shall operate or not as a stay of the order, declaration or decision which is subjected to appeal by the statute.

20. It appears that advisedly having eliminated the right of representation by legal counsel, the amending provisions of the Ceiling Act have kept a right of appeal available to aggrieved party. In the very nature of things it is difficult to follow that a declaration which is capable of being modified, rescinded or reversed in an appeal after its filing should still be available to the Collector for taking possession and should ensure to the benefit of the State for vesting of that property for the purpose of the Ceiling Act and to pass the said property in the process of equitable distribution contemplated by this law. Several of the working complications stare in the face if the look is taken to some other provisions of this Act.

21. By section 21A a person or the family unit that possesses surplus land is obliged to pay compensation for the use and occupation of the surplus land to be determined by the Collector from the year following the year in which surplus was found till the possession is taken. Sub-section (4) of section 21 declares that as soon as the possession is taken the land is deemed to have vested in the State without further assurance and free from all encumbrances. This has to be followed by the distribution of this land acquired by the State under Chapter VI wherein the interests of several persons would come up with regard to this land. This is a salutary scheme underlying the provisions of the high objectives with which this law has been enacted and presumably no exception can be taken to its basic terms.

22. However, assuming that the declaration of surplus land is effectively set aside in appeal by the Maharashtra Revenue Tribunal which is obviously permissible because of section 34 read with section 21(1) , there is no express provision permitting retake of the land from the persons who are called allottees and there is no further provision of declaration that the State Government shall stand divested of the land nor there is any provision which will permit grant of compensation to the person deprived of that land during the pendency of the appeal. Reliance was placed on section 39 for the State and upon the inherent powers of the appellate Court, i. e. the Maharashtra Revenue Tribunal to do justice by applying the principles of restitution. The provisions of section 39 really do not call for interpretation in the present proceedings but ex facie these indicate that they provide for the execution of the orders as is provided for in section 21 of the Mamlatdar's Courts Act and even in a given case State may claim immunity from section 39 because of the statutory declaration as is available in sub-section (4) of section 21 of the Ceiling Act that it possesses the land free from encumbrances. In other words, the effect of this declaration would be that inspite of the appeal which by its own nature is a sort of challenge to the right of the State, law assumes that State holds the land as a freehold and it is doubtful whether the effect of this declaration can be curtailed by an implication. Undoubtedly resolute processes are the part of the effective exercise of judicial power but whether those processes which are available to the Courts of universal jurisdiction would be available to the Tribunals of limited powers statutorily defined is a question that raises a debate by itself which need not be resolved in

this controversy. Suffice it to say that the provisions to which reference has already been made indicate that as soon as an appeal is filed under sub-section (3) of section 21, the finality is lost to the extent the matter under sub-section (1) of section 21 is under challenge. It is only upon the final and conclusive decision is made in appeal the Collector under sub-section (2) read with sub-section (4) can effectively take steps to possess the surplus land followed by the statutory declaration of acquisition and vesting.

23. Reference to the provisions of section 45 of the Ceiling Act also indicates that this is the inherent scheme of this legislation. Under sub-section (2) of section 45 revisional jurisdiction is conferred upon the State Government. It is meant to be exercised as and when occasion arises. That jurisdiction operates upon the enquiry and proceedings right from the stage of section 17 to 21. It will take in the declarations made under sub-section (1) of section 21. Proviso to sub-section (2) of section 45 indicates the conditions of that jurisdiction and those being, firstly where an appeal against any such declaration or part thereof has not been filed within the period provided for such an appeal; secondly the possession of such land has not been taken under subsection (4) of section 21; and thirdly the period of three years from the date of such declaration or part thereof has not elapsed. All these conditions have to exist cumulatively. The second condition is of primary importance and throws light on the intention of the Legislature. If the possession is taken immediately because there is a final and conclusive declaration under sub-section (1) as was contended for, then by very reason of the proviso the condition No. 2 shall never be satisfied and though the Legislature in terms created a jurisdiction in favour of the State Government meant to be exercised by it in the ends of justice and further the objects of the statute, the provision itself will lose its force and will be rendered nugatory.

24. The cumulative effect of these provisions i. e. sub-sections (1) and (3) of section 21 reading together, sub-section (2) of section 21 being executory in nature leading upto serious consequences indicated by sub-section (4) of that section; there being a pecuniary liability statutorily fastened u/s 21A and there being no similar provision to compensate the surplus holder deprived of the possession during the pendency of the appeal the reading of the rule 7 (3) of Distribution Rules indicating that the authorised Officer has to stay further proceedings if intimated about the appeal having been filed; and looking to the nature, jurisdiction and the relief that can be given in an appeal or revision, it appears fair, wholesome, just and proper to hold that filing of an appeal operates as stay of taking possession and of vesting the surplus land in favour of the State. If before the appeal is filed possession is taken, then the provisions of rule 7 (3) read with the provisions of CPC as well as the Regulations on which reliance was placed on behalf of the State indicate that the distribution proceedings can be effectively stayed in appropriate cases by the Maharashtra Revenue Tribunal. As far as taking of possession and vesting is concerned, filing of appeal operates as stay; but if he possession is lost, the aggrieved party is not without remedy to the extent indicated above.

25. This being the position of law, it has to be held as each of the petitioners has filed the appeal that operates as a stay disabling the Collector from taking possession and vesting the property in favour of the State. To such declarations the petitioners in each of these four petitions are entitled. The orders made do not affect the rights of the petitioners to remain in possession during the pendency of the appeal. As soon as the appeals are decided as stated in the body of the judgment the provisions enabling the Collector to enter upon the land come into effect and if the possession is taken the land shall stand vested in favour of the State. It is not necessary expressly to set aside these orders in view of the legal position indicated above. In fact upon the view I have taken, these orders are infructuous.

26. Petitions thus succeed and are allowed. However, there would be no orders as to costs in any of them.