

(2017) 10 BOM CK 0104
In the Bombay High Court
Case No : 1245 of 2006

Maharashtra State Road Development	APPELLANT
Vs	
Capt. Chandradeo Narayan Singh & Ors	RESPONDENT

Date of Decision : 04-10-2017

Acts Referred:

Land Acquisition Act, 1894, Section 16, Section 11, Section 17, Section 48, Section 48(1) - Power to take possession - Enquiry and award

Citation : (2017) 10 BOM CK 0104

Hon'ble Judges : Manjula Chellur, N.M. Jamdar

Bench : DIVISION BENCH

Advocate : Vijay Patil, P.G. Sawant, J.G. Aradwad, S.S. Kanetkar, Akshay Udeshi, Sanjay Udeshi

Judgement

1. Heard learned counsel for the petitioner and the party respondents.
2. The petitioner Maharashtra State Road Development Corporation Ltd. has challenged the judgment and order dated 6th December 2005 (Exhibit "N") whereby the application filed under Section 48(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") by one Capt. Chandradeo Naryan Singh (respondent no.1 herein) - subsequent purchaser from the party respondents, came to be allowed.
3. In order to understand the contest between the parties, it would be ideal to narrate in brief the facts that led to the order impugned dated 6th December 2005. The lands bearing Gat No.264 admeasuring 2.70 hectares, Gat No. 265 admeasuring 1.70 hectares, Gat No.266 admeasuring 1.52 hectares and Gat No. 267 admeasuring 1.46 hectares situated at village Parandwadi, Taluka Maval in the District of Pune came to be acquired for the benefit of the petitioner at the time of construction of MumbaiPune Express Highway. The agency, who was incharge of construction of MumbaiPune Express Highway, was the petitioner.

Since the said lands were required for quarry for the purpose of extracting the material for completing the Mumbai Pune Express Highway, the lands came to be acquired by invoking the emergency clause in terms of Section 17 of the Act. It is not in dispute that the possession of the lands came to be taken on 13th January 1998 in terms of the Act and final award came to be passed under Section 11 of the Act in the year 1999.

4. According to the respondent - purchaser, who had filed the application under Section 48(1) of the Act, the lands in question were purchased under the registered Sale Deeds way back in 1986. However, the revenue records did not indicate any such change in the ownership of lands at the time of initiating the land acquisition proceedings. The original owner submits before this Court that even the registered Sale Deeds of 1986 are under challenge and the suits are pending. We make it clear that we are not concerned with the merits of those suits and we need not mention anything so far as the merits of the case.

5. Be that as it may, the fact remains that subsequent to passing of the award in 1999, an application under Section 48(1) of the Act came to be made in 2003, which was much later than the award, and even much after the possession of the land handed over to the beneficiary in the year 1998. The authority who disposed of the application under Section 48(1) of the Act clearly opines that by catena of judgments of the Apex Court, he is aware of the fact that once the possession of the lands is handed over to the beneficiary, the benefit of Section 48 of the Act cannot be extended. However, he opines that for the reasons mentioned in paragraphs 2 and 3, he does not see any other reason why the application under Section 48(1) of the Act should not be allowed. "(2) Before proceeding with the merits of the case, the issue of jurisdiction needs to be settled.

(a) In the normal course, the powers under the provisions of Section 48(1) of the Act cannot be exercised after possession of the lands is taken over and the landowners have been paid the compensation amount. There are several rulings of the High Court to this effect and it is now the established law. In the instant case, the possession of the lands was taken over in the year 1998 and the compensation amount was also finally disbursed in the year 2000 and therefore, prima facie, it would appear that no request for deleting any lands from acquisition u/s 48(1) can be entertained at such a late stage. However, the circumstances of this case are quite peculiar. The Applicant continued to agitate his grievance before various fora and finally, this application, which was really a grievance petition, was ordered to be treated as an application u/s. 48(1) of the Act. Here we are faced with a situation that the Acquiring Body had communicated to the Land Acquisition Officer its decision to drop the suit lands from compulsory acquisition vide letter dated 13-01-1998 but the possession was taken on the same day and therefore it is quite obvious that the instructions were not received by the Opp. No. 3 prior to taking over possession. However, he had certainly received those instructions before declaration of the Award and yet, no heed was paid to those instructions. The compulsory acquisition proceedings

under the Act are initiated at the instance of an Acquiring Body and therefore, once the Acquiring Body withdraws its earlier request, it is incumbent upon the Land Acquisition Officer to halt all acquisition proceedings, at once. It is not permissible for him to take any further steps. In the present case, the Opp. No. 3 appears to have exceeded his brief and continued the proceedings on his own steam even after the MSRDC (which was the implementing agency) and the Opp. No. 4 (who was the Acquiring Body) informed him that they would like to take the lands on rental basis instead of acquiring them and asked him to delete the lands from compulsory acquisition. Any actions taken thereafter the Land Acquisition Officer towards compulsory acquisition must be held to be without jurisdiction and therefore, bad in law. The Award passed by him, after receipt of the said instructions from the Acquiring Body must be held to be a nullity and therefore, in my opinion, the question of limitation will not apply to the present case.

(b) Another peculiarity of the case is that the persons i.e. the recorded owners, who handed over the possession of the suitlands to Opp. No. 3 and received the compensation amount had, allegedly, sold the suitlands by registered saledeeds to the Applicant, long before the acquisition proceeding was initiated. This is disputed by them but if this allegation is found to be valid by the competent Court, then the said persons (i.e. the "recorded" owners) must be held to have acted without any authority and the possession handed over by them would become meaningless. It is not that the Opp. No. 3 was totally unaware of the dispute over the title of the land. Perhaps, he may not have known about the dispute at the time of taking over possession of the lands but he was certainly aware of it, when he sat down to write the Award and yet, he chose to ignore it. In view of this, both the actions of taking over possession and disbursement of the compensation become "tainted" or doubtful and therefore, on this ground also, I am of the opinion that my jurisdiction to exercise powers u/s. 48(1) of the Act is not impaired.

(3) It would be in order to record an observation about the conduct of the Opp. No. 4. It is nowhere denied by the MSRDC or the Opp. No. 4 that instructions were issued by them to the Opp. No. 3 in the year 1998 to delete the lands from acquisition. However, during the present proceeding, they vehemently tried to justify the requirement of the lands on a permanent basis. I do not see any reason to examine or comment upon the genuineness of their requirement. They were well aware of their requirements when they proposed the lands for deletion from compulsory acquisition in the year 1998. Some five years later, they cannot be allowed to sing a different tune. In any event, once they withdraw their request for compulsory acquisition, the proceeding initiated on the basis of their earlier request must be held to have concluded. It would, of course, be open to an Acquiring Body to initiate a fresh acquisition proceeding, if the circumstances require such a course of action.

In the instant case, MSRDC issued the instructions to delete the suitlands from

acquisition on 13-01-1998. By coincidence, it so happened that the Opp. No. 3 had already proceeded to Village Parandawane on the very day and therefore, he could not have received the instructions of the Acquiring Body prior to taking over possession. However, had the instructions been received even a day earlier, in all probability, the notification would have been withdrawn and thereafter MSRDC would have taken the same lands on rental basis. Then there would be no reason or occasion to press for permanent acquisition.

It was also argued on behalf of MSRDC that certain portions of the land bearing Gat number 265 have been leased out by them to a third party for the purpose of providing passenger amenities and now if the lands are deleted from acquisition, MSRDC would be put in an awkward position. The Applicant, during the course of arguments, offered to honour the existing lease agreements, which the MSRDC may have entered into and not to disturb the said third parties during the remaining period of the existing lease agreement. In short, he offered to discharge all the functions and responsibilities of the Lessor under the said lease agreements, as if he has stepped into the shoes of MSRDC. In exchange, he wanted MSRDC to withdraw its demand for the lands from Gat No. 265. However, MSRDC declined this offer and insisted that all the lands were required by them on a permanent basis. In these circumstances, it would not be possible to have any sympathy for or to show any leniency towards the grievance of MSRDC and the Opp. No. 4."

Consequently, the application under Section 48(1) of the Act came to be allowed. Aggrieved by the same, the beneficiary for whose benefit the lands came to be acquired is before us.

6. The reply affidavit to the writ petition came to be filed by the beneficiary who has now filed an additional affidavit clarifying under what circumstances she filed the reply affidavit. Since the officer who passed the impugned order could not file the reply affidavit and based on the draft affidavit sent by the officer who passed the impugned order, she filed the reply affidavit. This clearly indicates that the officer who passed the impugned order was the person to prepare reply affidavit which is filed in this Court.

7. Be that as it may, whether there is application of mind to the fact that the order impugned is in accordance with the law declared by the Apex Court, is to be seen. It is well settled that once the lands are acquired and possession is handed over, by virtue of Section 16 of the Act the lands vest with the State free from all encumbrances. That being the situation, even if the initial purpose for which the lands were acquired, i.e. for quarrying purpose, that does not exist any more, one has to see especially in the light of the petitioner consistently placed on record that the lands in question are required for establishing continuous maintenance of the MumbaiPune Express Highway as well as for establishing certain amenities to the travellers who make use of the MumbaiPune Express Highway. What happens to the claim of the applicant under Section 48(1) of the Act. The fact remains that once the lands vest with the State, even

if the initial purpose of requirement is withdrawn or not required, the lands cannot be given back to the original owner or the person who has interest in the said lands since the lands vest with the State free from all encumbrances. Once by operation of law the lands vest with the State, even if the initial purpose does not exist, the lands can be disposed of only in accordance with the procedure known to law and under any circumstances, the owner will not be able to get back the said lands.

8. We also note that the officer who passed the impugned order starts his order with the statement that he is very well aware of the law declared that once the possession is divested, Section 48(1) application cannot be entertained, still he proceeds to dispose of the same on the ground that there was a letter from the beneficiary that they do not require the lands in question. On verification of the said letter, which is at page 84, in fact it was not addressed by the petitioner - the beneficiary, but it was from the Mumbai Road Development and Design, Division I which is part of PWD. Admittedly, this Mumbai Road Development and Design, Division I was never in charge of formation of MumbaiPune Express Highway. Even now, they are not in charge of maintenance of the said road. On the other hand, when application under Section 48 of the Act came before the officer concerned, the petitioner not only placed objections on record, but also vehemently argued that the lands in question are required for the purpose of maintaining the MumbaiPune Express Highway and also providing certain amenities to the travellers who make use of the said road. Apart from this factual situation, once the lands vest with the State, the lands cannot be given back to the owners even if the owners were to offer market price. Such lands, which can be held as surplus, if not required, are to be disposed of only in accordance with the Land Disposal Rules applicable in the State of Maharashtra. In the present case, these lands cannot be considered as surplus lands or lands which are not any more required by the beneficiary. Under these circumstances, when possession of lands is handed over to the beneficiary of the lands, we are of the opinion that the officer ought not to have passed the impugned order.

9. We may also note that if compensation amount was paid to the original owners whose names were shown in the revenue records at the time of land acquisition proceedings, even if the subsequent purchaser seems to have purchased the lands much prior to the acquisition proceedings, he has to blame himself for not getting his name mutated in the revenue records. If at all he is entitled to claim any benefit from the original owners, we are not deciding the said controversy or issue and it is for the purchaser to take appropriate proceedings against the original owners to establish his rights and claim the money.

10. Relying on the judgment in *State of Kerala vs. M. Bhaskaran Pillai*, (1997) 5 SCC 432, the petitioner submits that if there is surplus land after satisfying the need of the beneficiary for maintaining the MumbaiPune Express Highway and also providing certain amenities to the travellers, the surplus land shall remain

with the State for its better use and under any circumstances it cannot be given back to the erstwhile owner even on market price. At the most, the surplus land has to be dealt with as a public property and must be put to auction like public property.

11. It would be appropriate to refer to the decision of the Apex Court in the case of Mahadeo (Dead) through LRs and Others v. State of Uttar Pradesh and Others, reported in (2013)4 SCC 524 which was disposed of along with other matters, wherein the Apex Court reiterated the position with regard to Section 48 of the Land Acquisition Act, 1894, once the possession has been taken. Paragraphs 14 and 16 of the said decision are relevant, which read as under: "14. There is no dispute with regard to the settled proposition of law that once the land is acquired and mandatory requirements are complied with including possession having been taken, the land vests in the State Government free from all encumbrances. Even if some unutilised land remains, it cannot be reconveyed or reassigned to the erstwhile owner by invoking the provisions of the Land Acquisition Act. This Court in Govt. of A.P. v. Syed Akbar held that : (SCC p. 563, para 10)

"10. It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act, the Government could withdraw from the acquisition of any land of which possession has not been taken. In the instance case, even under Section 48, the Government could not withdraw from acquisition or reconvey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled. In State of Kerala v. M. Bhaskaran Pillai, para 4 of the said judgment reads: (SCC p. 433)

"4. 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, 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 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 public

auctions so that the public also gets benefited by getting a higher value."

16. Indisputably, the land in question was acquired by the state Government for the purpose of expansion of the city i.e. construction of residential/commercial building under the planned development scheme by the Meerut Development Authority and that major portion of the land has already been utilised by the Authority. Merely because some land was left at the relevant time, that does not give any right to the Authority to send proposal to the Government for release of the land in favour of the landowners. The impugned orders passed by the High Court directing the Authority to press the resolution are absolutely unwarranted in law."

12. In the circumstances, we are of the opinion that the impugned judgment is not in consonance with the provisions of the Act and is invalid and, therefore is liable to be set aside. Accordingly the Rule is made absolute with no order as to costs.