

(2022) 03 GAU CK 0025
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 217 of 2019

Momotaj Bibi

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 10, 24, 24(2), 101, 114(1), 114(2)
General Clauses Act, 1897 — Section 6, 16, 17, 21
Land Acquisition Act, 1894 — Section 11, 16, 48

Citation : (2022) 03 GAU CK 0025

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : R. Choudhury, P.S. Deka, D. Borah, N. Goswami

Final Decision : Dismissed

Judgement

1. Heard Ms. R. Choudhury, learned counsel for the petitioners; Mr. P.S. Deka, learned Standing Counsel, Revenue & Disaster Management Department for the respondent nos. 1 & 4; Ms. D. Borah, learned Standing Counsel, Health & Family Welfare Department for the respondent nos. 2, 3, 9 & 10; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 5-8.

2. The petitioners, 13 [thirteen] in nos., have claimed themselves to be successors in interest of one Amatullah Sk. By this writ petition, they have stated that they are espousing a common cause of action. It is the case of the petitioners that Amatullah Sk was the owner of a parcel of land measuring 6 Bighas and 19 Lessas [06B-19L] located at Village – Jhogra Part-II in the district of Dhubri [Erstwhile, Goalpara district]. The parcel of land was comprised of different dag nos. A plot of land measuring 2 Kathas and 12 Lessas [02K-12L] [hereinafter referred to as 'the demised-plot'], out of the above parcel of land, was covered by Dag no. 957/787, under Khatian no. 267. There was a graveyard on a part of the subject-land, which was about 1 Katha and 5 Lessas [01K-5L]

[hereinafter referred to as 'the subject-plot'] in area. The dead bodies of the predecessors-in-interest of the petitioners were used to be cremated in the subject-plot. The entire plot of land measuring 06B-19L belonging to Amatullah Sk came to be acquired by the State Government by a land acquisition proceeding being L.A. Case no. 7/1976-77. The State Government acquired the said land for construction of a civil hospital therein. The predecessors-in-interest of the petitioners, Amatullah Sk received due compensation in connection with L.A. Case no. 7/1976-77 against his entire acquired plot of land. The land acquisition proceeding was drawn up as per the provisions of the Land Acquisition Act, 1894 [since repealed].

3. Ms. Choudhury, learned counsel for the petitioners has submitted that the subject-plot was recorded as graveyard in the revenue records prior to its acquisition. It was realized by Amatullah Sk later on that the subject-plot which was used by their family as private graveyard also got included within the acquired land and realizing such inclusion of the subject-plot, he submitted a representation before the respondent authorities in March, 1983 to exclude the subject-plot from acquisition. On receipt of the representation, the respondent no. 3 forwarded the same vide his letter dated 13.03.1984 [Annexure-2 to the writ petition] to the respondent no. 9, who in turn, requested the respondent no. 5 to cause an enquiry as to whether the subject-plot, reserved as graveyard, got included in the process of acquisition and whether the same can be de-requisitioned as the subject-plot cannot be used for construction purpose. It was also mentioned therein that the original landowner was agreeable to return the compensation amount in the event of the subject-plot was returned back to them.

3.1. Ms. Choudhury has submitted that after repeal of the Land Acquisition Act, 1894, the Parliament has brought in a new Act, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ['the 2013 Act' and/or 'the Act, 2013' for short]. Section 101 of the Act has contained a provision for return of unutilized land to the original owner if the acquired land remains unutilized for a period of 5 [five] years from the date of taking over the possession of the acquired land. It is her submission that as the subject-land, measuring 01K-5L, has not been utilized till date for the purpose of construction of the civil hospital for which it was originally acquired. Thus, there is no bar to return the subject-land to the petitioners who are the successors-in-interest of the original landowners and the petitioners are ready to return the compensation amount their predecessor-in-interest had received. Submitting so, the learned counsel for the petitioners has sought for a direction to the respondent authorities to return the subject-plot.

4. Mr. Deka, learned Standing Counsel, Revenue Department has submitted that there is no provision for return of any land or any part of the land, as the case may be, acquired under the provisions of the Land Acquisition Act, 1894 as after acquisition, it gets vested absolutely in the Government. A recourse to the provisions of Section 101 of the 2013 Act is also not available to the petitioners

to claim return of the subject-land measuring 01K-5L as Section 101 of the 2013 Act is restricted only to the land acquired under the said Act of 2013 and the provision of Section 101 cannot be extended for land acquisition under the Land Acquisition Act, 1894 [since repealed]. The Constitution Bench of the Hon'ble Supreme Court of India in Indore Development Authority vs. Manoharlal and others, reported in [2020] 8 SCC 129 has already dealt on the matter.

5. Ms. Bora and Mr. Goswami have adopted the submissions of Mr. Deka by making similar submissions. Mr. Goswami by referring to the averments made in the affidavit-in-opposition filed by the respondent no. 5, has submitted that the predecessor in interest of the petitioners, Amatullah Sk was already informed by a letter dated 23.08.1986 that as the subject-land measuring 01K-5L had already acquired, the request for de-requisition of the same cannot be considered. Thus, it is not open for the petitioners to revive a stale matter.

6. I have duly considered the submissions of the learned counsel for the parties and have also gone through the provisions of the Land Acquisition Act, 1894 [since repealed] and the Act, 2013.

7. It is an admitted case of the petitioners that the subject-land measuring 01K-5L belonging to the petitioners' predecessor-in-interest, Amatullah Sk was acquired for the public purpose of construction of a civil hospital vide L.A. Case no. 7/1976-77. After acquisition, the State Government has already constructed a civil hospital, that is, Dhubri Civil Hospital in some portion of the acquired land. From a letter no. DRQ.44/Pt/84/9 dated 23.08.1986 of the Land Acquisition Officer, Dhubri, it is noticed that the subject-plot measuring 01K-5L is, at present, within the boundary walls of the Dhubri Civil Hospital. By the said letter, it was informed to the authorities in the Public Health Engineering Department that as the subject-plot measuring 01K-5L was earlier used to be a graveyard, the said area be not used for construction of any building and be used for the purpose of gardening as per the order of the respondent no. 5.

8. It is not in dispute the parcels of land measuring 06B-19L including the subject-plot, were acquired under the provisions of the Land Acquisition Act, 1894. The Land Acquisition Act, 1894 stood repealed by virtue of sub-section [1] of Section 114 of the Act, 2013. Sub-section [2] of Section 114 of the 2013 Act has provided that the repeal under sub-section [1], save as otherwise provided under the 2013 Act, shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

9. It is noticed that the petitioners had earlier instituted a title suit, Title Suit no. 100/2014 seeking declaration, de-requisition and permanent injunction in respect of the subject-plot before the Court of learned Munsiff, No. 1, Dhubri. The said title suit, Title Suit no. 100/2014 was dismissed ex parte by a judgment and decree dated 19.04.2018. Against the judgment and decree dated 19.04.2014, a title appeal being Title Appeal no. 23/2018, was also preferred

before the Court of learned Civil Judge, Dhubri. The said title appeal, Title Appeal No. 23/2018 also came to be dismissed by a judgment and decree dated 01.11.2018 by upholding the judgment and decree of the learned Munsiff, No. 1, Dhubri. It is after the dismissal of the Title Appeal no. 23/2018, the preset writ petition has been instituted seeking a direction to the respondent authorities to return back the subject-plot to the petitioners and in such a case, the petitioners are ready to return the compensation amount received by their predecessor-in-interest under the provisions of the Land Acquisition Act, 1894 [since repealed].

10. In the above conspectus of factual matrix, the main issue that has arisen for consideration in this writ petition is whether after acquisition of the subject-plot under the provisions of the Land Acquisition Act, 1894 [since repealed] and after receipt of due compensation against such acquired land by the original land owner, whether the original landowner and/or their successors-in-interest like the petitioners can get back the said acquired subject-plot on the ground that the acquired subject-plot has remained unutilized for the construction of the Civil Hospital, Dhubri, the purpose for which it was acquired. The other issue that has arisen is whether the subject-plot can be returned to the petitioners as the successors-in-interest of the original landowner by virtue of the provision contained in Section 101 of the 2013 Act.

11. The said issues arising in this writ petition are no longer *res integra* in view of specific provisions contained in the Land Acquisition Act, 1894 [since repealed]; the Act, 2013; and also in view of the authoritative pronouncements of the Hon'ble Supreme Court of India on the specific issues.

12. Section 16 of the Land Acquisition Act, 1894 [since repealed] laid down that when the Collector had made an award under Section 11 of the said Act, he can take possession of the land and thereafter, the land vested absolutely in the Government, free from all encumbrances. Section 48 of the Land Acquisition Act, 1894 [since repealed] contained a provision granting liberty to the Government to withdraw from the acquisition of any land of which possession was not taken.

13. In *V. Chandrasekaran and another vs. Administrative Officer and others*, reported in [2012] 12 SCC 133, the Hon'ble Supreme Court of India had considered the issue as to whether the plot of land can be divested, once the same is vested in the Government after acquisition, under the provisions of the Land Acquisition Act, 1894 [since repealed]. Dealing with the issue, the Hon'ble Supreme Court of India had observed as under :

"25. It is settled legal proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period [Vide *Awadh Bihari Yadav v. State of Bihar*, [1995] 6 SCC 31; *U.P. Jal Nigam v. Kalra Properties [P] Ltd.*, [1996] 3 SCC 124; *Allahabad Development Authority v. Nasiruzzaman*, [1996] 6 SCC 424; *M. Ramalinga Thevar v. State of T.N.*, [2000] 4 SCC 322; and *Government of A.P. vs. Syed Akbar*, [2005] 1 SCC

558.]

26. The said land, once acquired, cannot be restored to the tenure-holders/ persons interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. The proceedings cannot be withdrawn/ abandoned under the provisions of Section 48 of the Act, or under Section 21 of the General Clauses Act, once the possession of the land had been taken and the land vests in the State, free from all encumbrances. [Vide *State of M.P. v. Vishnu Prasad Sharma*, AIR 1966 SC 1593; *Lt. Governor of H.P. v. Avinash Sharma*, [1970] 2 SCC 149; *Satendra Prasad Jain v. State of U.P.*, [1993] 4 SCC 369; *Rajasthan Housing Board v. Shri Kishan*, [1993] 2 SCC 84; and *Dedicated Freight Corridor Corpn. of India v. Subodh Singh*, [2011] 11 SCC 100.]

27. The meaning of the word 'vesting' has been considered by this Court time and again. In *Fruit and Vegetable Merchants Union v. Delhi Improvement Trust*, AIR 1957 SC 344, this Court held that the meaning of the word 'vesting' varies as per the context of the statute, under which the property vests. So far as the vesting under Sections 16 and 17 of the Act is concerned, the Court held as under :

19....In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of the Government without any condition or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration.

28. In *Gulam Mustafa v. State of Maharashtra*, [1976] 1 SCC 800, in a similar situation, this Court held as under :

"5.....once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. 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 thedeclaration."

29. Similarly, in *State of Kerala v. M. Bhaskaran Pillai*, [1997] 5 SCC 432, this Court held as under:

"4.....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."

[emphasis supplied]

See also *C. Padma v. Govt. of T.N.*, [1997] 2 SCC 627; *Bhagat Singh v. State of U.P.*, [1999] 2 SCC 384; *Niladri Narayan Chandradhurja v. State of W.B.*, [2002]

9 SCC 682; Northern Indian Glass Industries v. Jaswant Singh, [2003] 1 SCC 335; and Leelawanti v. State of Haryana, [2012] 1 SCC 66.

30. In Government of A.P. v. Syed Akbar, [2005] 1 SCC 558, this Court considered this very issue and held that, once the land has vested in the State, it can neither be divested, by virtue of Section 48 of the Act, nor can it be reconveyed to the persons-interested/tenure-holders, and that therefore, the question of restitution of possession to the tenure-holder, does not arise. [See also Pratap v. State of Rajasthan, [1996] 3 SCC 1; Chandragauda Ramgonda Patil v. State of Maharashtra, [1996] 6 SCC 405; State of Kerala v. M. Bhaskaran Pillai, [1997] 5 SCC 432; Printers [Mysore] Ltd. v. M.A. Rasheed, [2004] 4 SCC 460; Bangalore Development Authority v. R. Hanumaiah, [2005] 12 SCC 508; and Delhi Airtech Services [P] Ltd. v. State of U.P., [2011] 9 SCC 354].

31. In view of the above, the law can be crystallized to mean, that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the landowner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to reconvey the land to the person interested nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect."

14. Thus, from the above authoritative pronouncements on the law, it is settled that once the land is acquired and the mandatory requirements are complied with, the land vests in the State Government in absolute terms and free from all encumbrances. Even if some portion of acquired land remains unutilized for the public purposes for which it was acquired, it cannot be reconvened to the erstwhile owner by invoking any provision of the Land Acquisition Act, 1894. By virtue of Section 16 of the Land Acquisition Act, 1894, the acquired land upon making an award, absolutely vests thereupon in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act, 1894, the Government could withdraw from the process of acquisition of land or which possession was not taken.

15. In the case in hand, the provisions of Section 48 is found not applicable as the original landowner was paid due compensation under the Land Acquisition Act, 1894 [since repealed] and possession was duly taken of the acquired land including the subject-plot. As on date, the subject-plot remains within the boundary of the Civil Hospital, Dhubri which has been constructed after the acquisition of the land vide L.A. Case no. 7/1976-77. It is also settled that if the land was acquired for a public purpose and after the public purpose was achieved and some part of the acquired land remained unutilised, the rest of the land could be used for any other public purpose. It has been also held that in case there is no other public purpose for which the land was 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 should be utilised for the public purpose envisaged in the Directive Principles of the Constitution of India.

16. The plea of the petitioners on the premise of the provisions contained in Section 101 of the Act, 2013 is also not found sustainable in law. In this regard also, the law has been settled by the Constitutional Bench in Indore Development Authority [supra] wherein the Hon'ble Supreme Court of India by dealing with the provision of Section 101 of the 2013 Act together with the provisions of the Land Acquisition Act, 1894 [since repealed] has observed as under :

"Return of Unutilised Land under the 2013 Act

363. It was submitted that Section 101 provides for return of unutilized land under the 2013 Act. Section 101 provides that in case land is not utilised for five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government. Section 101 reads as under:

"101. Return of unutilized land.-When any land, acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.

Explanation. - For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of Government-owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use."

364. Section 24 deals with lapse of acquisition. Section 101 deals with the return of unutilised land. Section 101 cannot be said to be applicable to an acquisition made under the 1894 Act. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of lands is with respect to all lands acquired under the 2013 Act as the expression used in the opening part is "When any land, acquired under this Act remains unutilised". Lapse, on the other hand, occurs when the State does not take steps in terms of Section 24(2). The provisions of Section 101 cannot be applied to the acquisitions made under the 1894 Act. Thus, no such sustenance can be drawn from the provisions contained in Section 101 of the 2013 Act. Five years' logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilized under Section 24(2).

Conclusions of the Court

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land

vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

17. In the light of the above discussion with regard to the provisions of law contained in the Land Acquisition Act, 1894 [since repealed] and the 2013 Act and also in view of the authoritative pronouncements on the issues, arisen for consideration in this writ petition, by the Hon'ble Supreme Court of India, this writ petition with the afore-stated prayer is found not maintainable. Consequently, the same is liable to be dismissed. It is ordered accordingly. There shall be no order as to cost.