

(2002) 01 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 6710 of 2000

Mr. Dilip Narayanrao Jadhav and Another

APPELLANT

Vs

Mah. Rajya Sahakari Dudh Sangh Ltd. and Others

RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Citation : (2002) 1 ALLMR 883 : (2002) 104 BOMLR 217

Hon'ble Judges : S.A. Bobde, J;R.M. Lodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties.

2. The petitioners have principally prayed for following reliefs:

a. That this Honourable Court may be pleased to issue appropriate Writ, Order or direction, quashing and setting aside the orders of allotment made by the Respondent Nos. 5 and 6 in favour of the Respondent Nos. 1 to 4, Exhibit to this petition.

b. That this Honourable Court may be pleased to issue appropriate Writ, Order or direction directing the Respondent Nos. 5 and 6 to release the said lands from the acquisition and to return the said lands to the original occupants thereof including the Petitioners on such terms and conditions as this Honourable High Court may deem fit and proper.

3. The case of the petitioners is that the land bearing new Survey Nos. 79, 80 and 76 corresponding to old Survey Nos. 130, 132 and 133 respectively situate at Village Katraj, Taluka Haveli, Dist. Pune was in Mirashi tenancy of the petitioners predecessors-in-title. The said land was acquired for setting up T.B. Sanitarium in the year 1949. However, as the said land was not put to use for the purpose for which it was acquired, the State Government took the said land

back from the Trustees of Nanal T.B. Sanitarium in the year 1963. The contention raised is that the purpose for which acquisition of land was made having been frustrated, the petitioners are entitled to restoration of the said land and allotment made by respondent Nos. 5 and 6 in favour of respondent Nos. 1 to 4 is bad in law. Reliance is sought to be placed on the notification dated 10th October, 1973.

4. The writ petition, in our opinion, is wholly frivolous, abuse of process of Court and has no substance whatsoever. The land details of which has been given above was admittedly owned by one Shri Ganesh Ranganath Dhadaphale and acquired way back in the year 1949 in accordance with law by following due procedure. The award was also passed on 10th July, 1950 and the expropriated owners as well as the then occupants were paid compensations as per the award. Possession of the said land was then taken by the State Government and handed over to Trustees of Nanal T.B. Sanitarium .As the trustees did not put the land to use for which it was acquired, the State Government took back possession from the trustees on 11.11.1963. It appears that thereafter the State Government leased out 20 acres of land out of the aforesaid land to present respondent No. 1 for a period of ten years. This led the expropriated owner Ganesh Raghunath Dhadaphale to file the suit way back in the year 1975 challenging the lease of part of some land to respondent No. 1 herein. The expropriated owner in that suit prayed for restoration of the entire acquired land on the ground that the said land was not used for the purpose for which it was acquired by the Acquiring Authority. The Trial Court decreed plaintiffs suit and passed decree for possession in favour of the expropriated owner Ganesh Raghunath Dhadaphale holding that he has right to get back the acquired lands because the said lands were not used for the purpose for which they were acquired. The State Government challenged the judgment and decree passed by the Trial Court in appeal before the District Judge, Pune which was heard by 7th Extra Assistant Judge, Pune. By the judgment and decree dated 5.7.82 the Appeal Court dismissed the appeal filed by the State Government. Aggrieved thereby, the second appeal was preferred by the State Government before this Court. We find from the order passed by this Court on 20th June, 1992 that parties settled their dispute and accordingly, the original plaintiff viz. the expropriated owner Ganesh Raghunath Dhadaphale withdrew the suit. Once the original owner withdrew the suit and abandoned his right to restoration of the land in question on the ground that it was not used for the purpose for which it was acquired way back in the year 1982, it does not lie in the mouth of the present petitioners who claim to be Mirashi tenant to claim restoration of land after 50 years of completion of acquisition in all respects. Moreover the occupants of the land at the time of acquisition had already accepted the compensation way back in the year 1950 and during their lifetime did not seek restoration of the land in question. The petitioners who claim to be successor of such occupants, besides that there is nothing on record to show that petitioners are successors cannot raise the grievance which was not raised by their so-called predecessor-in-title.

5. Further it is factually incorrect on the part of the petitioners to allege that the acquired land has not been put to the use. It would be seen that much before 1975 part of the land was given on lease to Maharashtra Dugdh Sahakari Sangh viz. respondent No. 1 herein (who was defendant No. 2 in the earlier suit filed by original owner). The respondent No. 3 was allotted part of the land in the year 1987 and there is no dispute that the said land which has been allotted to respondent No. 3 has been put to use and development has been carried out. The photographs annexed by respondent No. 3 along with the reply affidavit at pages 111 to 117 show that huge development has taken place by construction of hospital, college of engineering, architecture and other institutions. Large tract of land having been put to use in 70s and 80s by respondent Nos. 1 and 3 who were allotted the land, it cannot be said that the acquired land has not been put to use. In *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, , the Apex Court ruled that there is no principle of law by which valid compulsory acquisition can be voided because the land acquired has been diverted to a public purpose other than the one stated in the declaration u/s 6 of the Land Acquisition Act. Legal position is well established that it is open to the State Government to use the acquired land for the public purpose other than for which it has been acquired. In the present case, large tract of land has already been put to public use. The learned Counsel for petitioners heavily relied upon the Government Resolution dated 10th October, 1973 for restoration of the unused and unutilised land. The said Resolution is of no help to the present petitioners as we have already observed that the expropriated owner had claimed restoration of possession way back in the year 1975 on the ground that the acquired land has not been utilised and had challenged the lease of 20 acres of land to first respondent herein. The said suit was ultimately withdrawn by the expropriated owner before this Court. The selfsame plea cannot be raised by the petitioners who claim to be Mirashi tenant when the expropriated owner had already withdrawn the suit on that ground. Besides that, on the basis of Resolution dated 10.10.1973, in the light of the judgment of the Apex Court in *State of Kerala and others Vs. M. Bhaskaran Pillai and another*, the petitioners cannot claim restoration of the lands in question. The Apex Court observed thus:

4. 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.

6. In view of the aforesaid legal position, the validity and legality of the

Government Resolution dated 10th October, 1973 is highly questionable and therefore, its enforcement cannot be sought by the petitioners.

7. For all these reasons do not find any merit in the writ petition and it is, accordingly, dismissed.