

(2008) 01 BOM CK 0159

In the Bombay High Court

Case No : Writ Petition No. 6033 of 1997

Prabhavati Jagannath Thakar since deceased through LRs.
Vijay Jagannath Thakar and others

APPELLANT

Vs

Collector, Requisition Branch, Pune and others

RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 6
Government of India Act, 1935 — Section 220, 299

Citation : (2008) 01 BOM CK 0159

Hon'ble Judges : Nishita Mhatre, J;J.N. Patel, J

Bench : Division Bench

Advocate : G.S. Godbole and A.B. Tajane, for the Appellant; V.A. Sonpal, A.G.P. for Respondent Nos. 1, 4 and 6 and Ms. S.V. Bharucha for Respondent Nos. 2, 3 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Smt. Nishita Mhatre, J.—This petition seeks a direction against respondent Nos. 1 to 4 to take necessary steps to acquire lands bearing Survey Nos.3 and 4 situate at village Kopare and land bearing Survey No. 19 of Village Shivane under the provisions of the Land Acquisition Act, 1894. The petitioners have also prayed in the alternative that if the lands have been acquired already, then the compensation should be paid to the petitioners at the rates prevailing today. The petitioners have also prayed that in the event the respondent No. 6 does not require the lands for the purpose for which they were requisitioned initially, the lands should be derequisitioned and handed over to the petitioners.

2. The aforesaid lands were owned by the original petitioner's husband Dr. Jagannath Thakar. He died on 14-11-1986. The petition was filed in 1997 by the original petitioner. She expired during the pendency of this writ petition and the heirs of Dr. Jagannath Thakar and the original petitioner have been brought on record as petitioners 1a to 1g.

3. On 25-4-1942 the aforesaid lands were requisitioned by the Collector of Pune under Rule 75-A of the Defence of India Rules framed under the Defence of India Act. These lands continued under requisition till they were acquired by an order in the year 1951. The Collector of Pune, by his award dated 14-2-1955 awarded compensation for the aforesaid lands to the owner i.e. Dr. Jagannath Thakar. No grievance was made about the compensation or the acquisition till the filing of the present petition in the year 1997. It is the contention of the petitioners that the lands have not in fact been acquired since the acquisition is non-est. According to the petitioners, the Government could not acquire the lands under the Requisitioned Lands (Continuance of Powers) Act, 1947 (hereinafter referred to as "Act 17 of 1947") in view of the provisions of section 5 of the Act 17 of 1947. This Act was later amended. According to the petitioners, the provisions of Act 17 of 1947 were no longer applicable from 1-4-1951 in view of the Amendment Act 9 of 1951 which came into effect prior to the notification for acquisition dated 6-9-1951. The petitioners therefore contend that the notice published by the Collector of Pune is void ab-initio as it was issued under clause (b) of sub-section (3) of section 1 of Act 17 of 1947 as amended by Act 9 of 1951. This contention is based on the premise that the lands were situate in the province of Bombay and Act 17 of 1947 had ceased to apply to such lands from 1-4-1951. Besides, these lands could not be considered to be subject to requisition under the authority of the Central Government since they were requisitioned by the Collector under the provisions of the Defence of India Rules. It is contended that since the entire acquisition is void ab-initio, the lands must be deemed to have continued under requisition. A contention is then raised that since it is well settled that requisition of lands cannot be permitted to be continued indefinitely, the lands must be acquired under the provisions of the Land Acquisition Act. Reliance is placed by the learned counsel for the petitioner on the judgment of the Supreme Court in the case of H.D. Vora Vs. State of Maharashtra and Others, and in the case of T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, Madras, .

4. Before we consider the contentions raised by the petitioners in the petition, we must advert to the issue of delay and laches on the part of the petitioners in filing the present petition. The requisition was of the year 1951. The lands were acquired by Notification published in the Bombay Government Gazette in 1951. The award is dated 15-5-1955. The petitioners have chosen to file the present petition in 1997 i.e. after 46 years after the lands were notified for the acquisition. There is no explanation in the petition whatsoever for the delay. Reliance is placed by the petitioners on the judgments of this Court in (1) N.L. Abhyankar Vs. Union of India and Others, ; (2) M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, ; and (3) Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, .

5. In the case of N. L. Abhyankar, the Division Bench of this Court held that it was not an inflexible rule that a writ petition which is filed after a period of three

years, which is normally be the period of limitation for a suit, should be dismissed on the ground of inordinate delay and laches. It was held that a stale claim would not be entertained by the Court as a matter of practice based on sound and proper exercise of discretion but there was no inviolable rule or law that whenever there is delay, the Court must necessarily refuse to entertain the petition. In that case, a retired Judge of this Court claimed death-cum-retirement gratuity by filing a petition in 1993 although he had retired in 1969. After considering judgments of the Supreme Court, the Division Bench observed as aforesaid. This Court entertained the writ petition, although it was delayed, because the delay had been satisfactorily explained. In the case of Dehri Rohtas (supra), the Supreme Court observed that the delay in filing a writ petition, when explained satisfactorily, would permit the Court under Article 226 of the Constitution of India to entertain a belated claim when the illegality was manifest. Similarly, in the case of Ramchandra S. Deodhar (supra), the Supreme Court had reiterated its earlier view and held that delay need not necessarily defeat the claim in a writ petition, if there was a reasonable explanation for the delay.

6. In our opinion, the present petition does not disclose any reasonable explanation, much less a satisfactory one for the inordinate delay of 46 years in approaching this Court. Even if one considers the date of the award as the date when the cause of action arose, there is a delay of 42 years which again is unexplained. The owner of the land Dr. Thakar died in 1986. He had made no grievance at all about the acquisition. The writ petition had been filed eleven years after the death of Dr. Thakar. There is no explanation for this delay either. In such circumstances, we do not see any reason to entertain the writ petition.

7. On merits, the contentions raised by the petitioners are unsustainable. The foundation of the submissions of the learned counsel for the petitioner is based on an incorrect interpretation of what constitute Part A States and Part C States. The learned counsel has submitted that in view of Act 9 of 1951, Act 17 of 1951 ceases to apply to the petitioners' lands from 1-4-1951 since these lands are situate in what was then known as the Province of Bombay. The Adaptation of Laws Order, 1950 provides that Governors' Provinces are Part A States. The Government of India Act, 1935 stipulates that the Bombay Province is the Governor's Province. Therefore, the Province of Bombay is a Part A States. Act 9 of 1951 substitutes sub-section (3) of section 1 of Act 17 of 1947 in the following manner :--

(3) It shall cease to have effect in Part C States on the 1st day of April, 1952, and in Part A States -

(a) as respects the requisitioned lands which, at the commencement of the Requisitioned Land (Continuance of Powers) Amendment Act, 1951 are subject to requisition by or under the authority of the Central Government on the 1st day of April, 1952, and

(b) as respect other requisitioned lands, on the 1st day of April, 1951, except as respects things done or omitted to be done before such cesser of operation of this Act, and section 6 of the General Clauses Act, 1897 (X of 1897) shall apply upon such cesser of operation as if it had then been repealed by a Central Act.

Thus, in the case of the petitioners' lands, Act 17 of 1947 ceases to apply from 1-4-1952. The acquisition of these lands was effected on 6-9-1951 i.e. when Act 17 of 1947 was still in force. The submissions of the learned counsel that the lands are not covered by Act 17 of 1947 is not acceptable.

8. The learned counsel for the petitioners then submitted that the Collector was not competent to pass the award. u/s 19 of the Defence of India Act 1939, compensation is to be paid in accordance with certain principles for compulsory acquisition of immovable property. Section 19 of the Defence of India Act reads thus -

19. Compensation to be paid in accordance with certain principles for compulsory acquisition of immovable property, etc.- When u/s 19A or by or under any rule made under this Act any section is taken of the nature described in sub-section (2) of section 299 of the Government of India Act, 1935 (26 Geo.5, c.2), there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say,-

(a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.

(b) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the abovementioned Act for appointment as a Judge of a High Court.

(c) The Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property acquired, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.

(d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation. Thus, u/s 19B, the Central Government is empowered to appoint an arbitrator qualified under sub-section (3) of section 220 of the Government of India Act, 1935 for appointing as a Judge of the High Court. The learned counsel submits that the Collector could not be qualified to be appointed as a Judge of the High Court and, therefore, the award passed by the Collector is vitiated.

9. In our opinion, this submission is also not sustainable in view of the provisions of the General Clauses Act. u/s 6 of the General Clauses Act, steps, proceedings which had already been undertaken before an Act is repealed, are saved. All proceedings undertaken prior to the cessation of the operation of Act 17 of 1947 are saved by section 6 of the General Clauses Act, 1897 as stipulated in the

Amendment Act 9 of 1951. Therefore, the proceedings undertaken by the respondents in respect of compensation payable to Dr. Thakar were protected and the award of the Collector granting compensation cannot be challenged on this ground.

10. In our view, the petition is devoid of any substance. The acquisition has been made in 1951, the award has been passed in 1955 and the amount has not been collected by the petitioners till date. Merely because the petitioners have not collected the amount, it would not indicate that the petitioners had not accepted the award and, therefore, could challenge it after 46 years.

11. The petition is, therefore, dismissed. Rule discharged. No order as to costs.