

(2011) 05 JH CK 0107

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2046 of 2011

Raju Lakra and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 16, 48

Citation : (2011) 3 JCR 171

Hon'ble Judges : D.N. Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This writ petition has been preferred by the Petitioners for getting back the land, which has not so far been used by the Respondent-State of Jharkhand, after acquisition.

2. It is submitted by the learned Counsel for the Petitioners that the purpose for which the land was acquired is a public purpose and the Government has not used the land, for which it has acquired the land and, therefore, the land must be reverted back to the Petitioners, because the Petitioners are the legal heirs of the original raiyat.

3. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, the aforesaid proposition, tendered by the learned Counsel for the Petitioners, is not accepted by this Court. Once the land is acquired and compensation is paid by the Government, it becomes the property of the Government u/s 16 of the Land Acquisition Act, 1894. It might not have been used for the public purpose, for which it was acquired. It all depends upon the wisdom vested in the Government.

4. Once the land is acquired, it vested in the State, free from all encumbrances. The landowner is concerned with the payment of compensation. After the acquisition of the land, the original landowner becomes persona non grata,

because now the land vests in the State. The persons interested has No. right to claim the restoration of the land on any ground, whatsoever.

5. It has been held by the Hon''ble Apex Court in the case of Govt. of A.P. and Another Vs. Syed Akbar, , especially at paragraph Nos. 10 to 14, as under:

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. u/s 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even u/s 48, the Government could not withdraw from acquisition or to 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 utilized 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 the public auctions so that the public also gets benefited by getting a higher value.

11. In that case, an extent of 1.94 acres of land was acquired in 1952 for construction of national highway and the construction was completed in 1955 in 80 cents of land and the balance of land remained unused. The remaining land was sought to be sold to the landowner at the same rate at which the compensation was awarded u/s 11. This again was challenged in the writ petitions. The Government tried to sustain the action on the basis of the executive order issued by the Government for permission for alienation of the land. On these facts, the position of law was made clear in para 4 extracted above. Thus, it is clear that u/s 16 of the Land Acquisition Act, the acquired land should vest in the State free from all encumbrances and that any executive order inconsistent with the provisions of the Land Acquisition Act was invalid. Further 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 our

view, this decision supports the case of the Appellants fully.

12. In the case of Chandragauda Ramgonda Patil v. State of Maharashtra, claim of the Petitioner for restitution of the possession of the land acquired pursuant to the resolution of the State Government was rejected. In para 2, this Court observed thus: (SCC p. 406)

2...We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken away back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the writ petitions. It is axiomatic that the land acquired for a public purpose would be utilized for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilized, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions.

13. Yet in another recent decision, this Court in Northern Indian Glass Industries v. Jaswant Singh, referring to the case of Chandragauda Ramgonda Patil and Ors. cases held that: (SCC p. 340, para 12)

12. If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the Respondents to ask for restitution of the land.

Paras 10 and 11 of the said judgment read thus: (SCC p.340)

10. In Chandragauda Ramgonda Patil v. State of Maharashtra, it is stated that the acquired land remaining unutilized was not intended to be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of notification.

11. Yet again in C. Padma v. Dy. Secy. To the Govt. of T.N. It is held that acquired land having vested in the State and the compensation having been paid to the claimant, he was not entitled to restitution of possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for other purpose.

14. From the position of law made clear in the aforementioned decisions, it follows that (1) u/s 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the government free from all encumbrances cannot be reassigned or reconveyed to the original owner merely on the basis of an executive order.

(Emphasis supplied)

6. It has been further held by the Hon"ble Apex Court in the case of Smt.

Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others, , especially at paragraph No. 22, as under:

22. In view of the above, the law can be summarized that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the landowner how his land is used and 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 get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever.

(Emphasis supplied)

7. In view of the aforesaid facts and circumstance and also the judicial pronouncements, I am not inclined to entertain this writ petition for reverting the land back to the present Petitioners. There is No. substance in this writ petition and hence the same is hereby dismissed.