

(1980) 03 BOM CK 0031
In the Bombay High Court
Case No : Spl. C.A. No. 1075 of 1973

Rudmal Shionarayan Haridwar

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 14-03-1980

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6, 6(3), 9

Citation : (1980) MhLj 842

Hon'ble Judges : V.V. Joshi, J;V. Mohta, J

Bench : Division Bench

Advocate : J.N. Chandurkar, for the Appellant; V.P. Salve, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Mohta, J.—Writ petitioner is a landholder. He owns field Survey No. 131/1, admeasuring 5 acres 18 gunthas in village Kandli, Taluq Achalpur, District Amravati. It is a horticulture land with several fruit bearing trees such as orange, sweet-lime etc. and a well on which two electric pumps are fitted for drawing water for cultivation. One house, temple and a tomb also stand in the said field. O. 29 acres out of this land has been acquired by the State in terms of the provisions of the Land Acquisition Act, 1884. Validity of these acquisition proceedings is the subject-matter before us.

2. For extension of Gaothan land was necessary. Gaothan forms part of survey No. 134. A revenue case was, therefore, opened by the State. Tahsildar was asked to visit the spot and to report on the suitability of various lands, which he did on 4-6-1965. According to that report, field survey Nos. 137, 133, 106, 107 which were adjacent to Gaothan and village and so also adjoining road to Paratwada was suitable for the purpose. The landholders of these fields including field survey No. 133, Shri Amrit Belsare had submitted an objection saying that their land was garden land. But the Tahsildar found this objection to be incorrect. Admittedly, well never existed in field survey No. 133. Notification u/s 4 of the

Act was published in respect of field survey No. 1, 137, 133, 106 and 107. The combined area of these fields is 6.21 acres and that of field survey No. 133 is 0.29 acres. Objections were invited to the proposed acquisition. One of the objections raised by the owner of field survey No. 133 was that the field had a potentiality of being a garden land. They were duly considered and over-ruled by the State and consequently notification u/s 6 was published on 10-7-1967. Notices u/s 9 were also issued to the respective owners calling upon them to file claim statement. It appears that further proceedings were stayed due to telegraphic order dated 25-10-1967 from the State Government. This telegram made reference only to field survey No. 133. On 23-6-1968, this stay was vacated. Land Acquisition Officer thereafter directed the owner once again to submit claim statement which he declined to do. In December 1968, the proceedings were once again stayed by the State Government. However, on 22-8-1969, the Land Acquisition Officer received final communication dated 11-7-1969 from the State dropping acquisition proceedings only in respect of field survey No. 133 out of the 5 fields acquired. By that very order specific direction was issued to start acquisition proceedings in respect of petitioner's field.

3. On 28-1-1971 notification u/s 4 in respect of petitioner's field was issued. The petitioner submitted objections on 16-3-1971 contending inter alia (1) that after purchase of the land by him from Shri Sudhir Naik on 17-4-1969, he had planted 400 fruit trees in summer of 1969 and that they were two years old; (2) that there was no surviving need for acquisition of this field as the other area acquired was sufficient; (3) that his field was excluded long before and that it was not adjacent to Gaothan having been situated beyond field survey No. 133 as well as the public road and (4) that dropping of acquisition proceedings with relation to field survey No. 133 and so also the specific order acquiring petitioner's field was illegal, mala fide and without any reason whatsoever.

4. In the report submitted by the Land Acquisition Officer dated 30-5-1972, it was not disputed that field survey No. 133/1 had a well, electric pump etc. and that fruit trees existed as contended by the petitioner. It is mentioned that the field had a house, temple, tomb etc. and that this property was excluded from consideration previously and that it was not adjacent to the Gaothan. The report is conspicuously silent regarding the allegations of mala fides made with relation to the dropping of acquisition proceedings about field survey No. 133. There is only a one line sentence that it was done at the instance of the Government. No reason has been given even in the communication dated 11-7-1969 addressed by the Secretary of the Revenue Department jointly to owner of field survey No. 133 and the local M. L. A. on the basis of which proceedings were dropped. Perusal of that communication will show that the decision to drop the proceedings was taken at Amravati at the instance of the Revenue Minister who directed the Collector to drop the land acquisition proceedings in respect of field survey No. 133 and to acquire field survey No. 131/I in its place.

5. To complete the narration of facts, it is also necessary to record the recitals in the order sheet dated 29-6-1971 in which there is a mention that 70 plots were available as against the requirement of 60 and hence indeed there was no necessity to have additional land. Having taken resume of the factual and historical back ground, let us turn to the various points of law urged before us by the learned" counsel for the petitioner, Shri Chandurkar.

6. In the first place, it was submitted that the impugned notifications are void on the ground of vagueness as there is no reference to the exact location of the acquired land in the notification. It is true that in the notification there is no such mention but there is a reference to the plan which is kept on the record and made available for general inspection. In the plan, the area as well as the location is demarcated by red pencil. The only purpose of specifying the area and location in the notification is to make the owner aware about the exact portion which was sought to be acquired. The method adopted by the State Government certainly serves this object And we find nothing basically wrong in the same. It has also not resulted in any sort of prejudice to the petitioner. The petitioner must also not have experienced any difficulty in locating the acquired land and that is the reason as to why this objection was not taken before the Land Acquisition Officer. The grievance made by the petitioner for the first time before us in this respect appears to be hollow. Shri Salve, the learned Assistant Government Pleader brought to our notice Division Bench decision of this Court in *Mukhtvar Begum Vs. The Commissioner, Nagpur Division, Nagpur and Others*, in which an identical view has been taken. We are taken through that judgment and we are in respectful agreement with the same. Second point related to the absence of necessity to acquire. Our attention was invited to the order-sheet dated 29-6-1971 in the land acquisition proceedings reading as under:

Excluding S. No. 131/1 and 133, there will be about fifty to sixty plots, while fifty to sixty people are reported in need of plots. So there is no need to acquire S. No. 131/1. Government has directed to leave S. No. 133. Put up necessary proposals for notification."

However, we notice that in the subsequent report by the Land Acquisition Officer a different picture has been presented. Under the circumstances, we are not impressed even by this point as rightly contended by the learned Assistant Government Pleader, it is not for the Court to investigate into the extent of the area required for the public purpose. No doubt there are two conflicting reports of the Land Acquisition Officer but we do not think it will be proper under the circumstances to enter into this controversy and adjudicate upon the debatable point. We therefore hold that it was the absolute right of the Government to take a final, decision in the matter. Second point thus fails.

7. The third point raised by the petitioner, however, deserves serious-considerations. The point is that the acquisition is mala fide, discriminatory in abuse of power and also result of total non-application of mind. Now, there is no

manner of doubt that jurisdiction of the Courts over the choice of the Government regarding selection of land for acquisition proceedings is very limited and narrow. In the case of Smt. Somavanti and Others Vs. The State of Punjab and Others, dealing with the powers of the Court in this connection, the Supreme Court has made the following observations:

That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party.....In other words the question would then arise whether that: declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of section 6 (3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, provisions such as section 6 (3) notwithstanding.

The ambit of jurisdiction of the Courts to strike down the Government decision in selecting a particular land for acquisition has now been crystallised due to further judicial pronouncements made from time to time. In the case of Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, , it has been held that even though opinion has been formulated subjectively, it can always be challenged as ultra vires on successful demonstration that either it was mala fide or was result of non-application of mind. Division Bench of this Court had also an occasion to deal with this question in the case of Narayan Govind Gavate v. The State of Maharashtra 1971 (73) Bom. L R 873. The following observations may be usefully noted :

It can be challenged, firstly, on the ground of mala fides secondly, on the ground that the authority which formed that opinion or which arrived at such satisfaction did not apply its mind to the material on "which it formed the opinion or arrived at the satisfaction; and, thirdly, that the material on which it formed its opinion or reached the satisfaction was so insufficient that no man could reasonably reach that conclusion. So far as the third point is concerned, no Court of law can, as in an appeal, consider that on the material placed before the authority the authority was justified in reaching its conclusion. The Court can interfere only in such cases where there was no material at all or the material was so insufficient that no man could have reached that conclusion.

8. Thus, it is clear that on the grounds of mala fides abuse and colourable exercise of the power, total non-application of mind and absence of material to form opinion, the acquisition proceedings can always be challenged. In such cases, the Courts are not only empowered to strike but indeed would be duty bound to do so in exercise of the judicial reserve power. There is no manner of doubt that this power has to be exercised rarely, for charge of mala fides against the Government and public authorities is many times lightly made. But this coin has also other side. Scales are always weighed against the citizen whenever there is a battle between him and the State. Sometimes mala fides may exist but it is not always easy to tender proof of the standard required in a Court. In such

cases, the Court may be on the horns of dilemma but cannot and should not interfere. When circumstances are clear and speak volumes of mala fides or non-application of mind, the jurisdiction of the Court does creep in. The ideal course for the Courts to adopt is neither to accept the allegations of malice lightly nor to treat the State version as conclusive in the matter. The learned Assistant Government Pleader, Shri Salve, invited our pointed attention to the following observations of this Court made in the case of Jamnadas Bhate v. Commissioner, Nagpur Division, Nagpur 1976 Mh. L J 2677 :

It is well settled that mere allegation that the power is exercised mala fide would not be enough, but in support of the said allegation specific material should be placed before the Court. The burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often made very easily and light-heartedly, without placing any material in support of such a plea. Normally, the very seriousness of the allegations demands a credible proof of high order in support of such allegations, more so when the allegations are made against the Government or a statutory body.

We have our respectful concurrence with the aforesaid observations. However, it may be noticed that in that case it was held that no material was placed before the Court to indicate the mala fides of any of these superior officers including the Additional Commissioner.

8. Considering the undisputed facts on record, on the touchstone of the various tests laid down, it seems clear to us that in the present case, mala fides are apparent on the face of the record. First of all, it will be necessary to refer to the return filed by the State reading as under :

The land under survey No. 133 was used as a Bagait land and, there fore, the same was dropped from the acquisition. As submitted herein before, the improvements and plantation of trees in the land belonging to the petitioner was made after the notifications under sections 4 and 6 of the Land Acquisition Act were issued.

Mere cursory glance of the facts will demonstrate that in comparison to field survey No. 133, the petitioner's field is at distance from Gaothan, and is also intercepted by a road. Even as per report of the Land Acquisition Officer, field survey No. 133 was not a horticultural land at the time of the spot inspection by the Tahsildar. Indeed, from the subsequent objections u/s 5-A taken by the owner of field survey No. 133, it is borne out that this field never had a well and the owner had referred only to the potentiality of the land as garden land. No doubt he had made a statement that the water from the Gaothan well was used for having wet cultivation. As against this, the petitioner's field had a well and electric pump since the very beginning and even as per report of the Land Acquisition Officer u/s 5-A of the Act with relation to the petitioner's field it is conceded that the petitioner's contention regarding the age of the fruit bearing trees was correct. It may be recalled that according to the petitioner, trees were

planted in the summer of 1969 i.e. more than 1 1/2 years before the date of section 4 notification with relation to his land. It is thus clear that the reasons both for dropping proceedings in respect of field survey No. 133 and acquiring the petitioner's field are totally non-existent.

9. The stage at which the proceedings were dropped is also significant and speaks for itself. After considering the merit and demerit of all available suitable land for quite sometime, field survey No. 133 and other adjoining lands adjacent to the Gaothan were preferred. Section 4 notification was issued rejecting these very objections. Section 6 notification was duly published jointly with relation to the five fields and the owners were noticed to file claim statement in terms of section 6. At that stage, the State Government was pleased to grant stay not with relation to all the five lands but only field survey No. 133. This stay was subsequently vacated as the representation was considered to be devoid of any substance and not maintainable by the Government authorities. Then once again a decision was taken at the direction of the Revenue Minister to drop the proceedings with relation to field survey No. 133 and to acquire the petitioner's land. No reasons are disclosed at that time. This material can be found in the communication dated 11-7-1969 addressed by the Secretary of the Revenue and Forest Department to the owner of field survey No. 133 and the local M. L. A. The gist of the communication, (at record page 343 of the original record) which was placed before us, is that in connection with acquisition of field survey No. 133, there was discussion between the Revenue Minister and the Collector and that Government has decided to release field survey No. 133 only from acquisition and had also taken further final decision to acquire field survey No. 131/1 in its place. From this communication, it is clear that the subordinate authorities on the spot were not given any discretion to choose or suggest any other suitable land even though available. In this background, it seems to us that the matter was already prejudged by the State at the highest level and all that was expected of the officers was to submit a proposal regarding survey No. 131/1 only acceptance of which was a foregone conclusion. It seems clear to us, therefore, that the acquisition is either mala fide, in abuse of power, or without any application of mind.

10. It is true that no allegation of any personal grudge or malice in fact against the petitioner is made but the allegations of discrimination and favour with relation to the owner of field survey No. 133 are certainly made. We may notice that for successful challenge to the acquisition existence of malice in fact is not sine qua non. In this connection, we may quote with our approval the following observations in the case of *Mrs. Ambujam Menon and Others Vs. State of Kerala and Others*, :

We think these allegations are sufficient allegations of mala fides and non-application of the mind. We would only add that an order is vitiated by mala fides if it is passed by an authority without applying its mind at all, even though there is no evidence of any personal ill-will, corrupt motive, or other improper purpose.

Under the peculiar circumstances, we conclude that the acquisition is illegal on the third ground raised by the petitioner.

11. In the result, the petition is allowed and the impugned notifications under sections 4 and 6 of the Land Acquisition Act in respect of the petitioner's land are quashed, and the rule is made absolute. No order as to costs.