

(2017) 09 BOM CK 0010
In the Bombay High Court
Case No : 10895 of 2017

Shaikh Kalim Shaikh Mohammad, & Anr. APPELLANT
Vs
The State of Maharashtra, Through its Secretary, Industries RESPONDENT
Department, Mantralaya, & Ors.

Date of Decision : 25-09-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4 -
Publication of preliminary notification and powers of officers thereupon.
Maharashtra Industrial Development Act, 1961, Section 1(3)

Citation : (2017) 09 BOM CK 0010

Hon'ble Judges : R.M. Borde, Vibha Kankanwadi

Bench : DIVISON BENCH

Advocate : Umesh A. Bhadgaonkar, S.G. Karlekar, S.S. Dande

Judgement

1. The petitioners have invoked the writ jurisdiction of this court in order to seek issuance of writ in the form of direction to quash the letter 01.07.2017 issued by respondent no.05 as well as to direct respondent no.08 to register sale deed of the land in view of the application dated 12.07.2017 made by them.

2. The factual matrix leading to the petition are as under : (a) The petitioners are the agriculturists. They are the owners of land bearing Gut No.80/1 admeasuring 1 Hectare 38 Are plus 0.24 barren (Pot Kharab) situated at village Holhaveli, Taluka Jamner, District Jalgaon. The petitioners had decided to sell their land and, therefore, entered into an agreement of sale with one Shri Jayprakash Jadhav. They had also issued public notice in the newspaper dated 29.06.2017. The petitioners and the purchaser approached the office of respondent no.08 SubRegistrar, Jamner, for execution of the sale deed. However, the authority refused to execute the same stating that there are restrictions on the sale and purchase transaction in the said area. The petitioners, therefore, made enquiry and came to know that respondent no.02 has issued notice in exercise of powers conferred to it by Clause 9 of Section 2 of the Maharashtra

Industrial Development Act, 1961 [For short, "MID Act"]. Respondent no.02 has declared village Kasbe Jamner to be an industrial area.

(b) Further in view of the publication of the notification about the declaration, respondent no.05 has issued directions to the Tahsildar and the SubRegistrar, Jamner, on 01.07.2017 notifying the restrictions of transactions of sale and purchase in the said area in view of preliminary notification under Section 32(2) of the MID Act. Thereafter petitioners made an application to respondent no.08 SubRegistrar on 12.07.2017 stating that the petitioners have entered into an agreement to sell their agricultural land and they have received the consideration from the purchaser. They also contended that it is necessary to register a sale deed in pursuance to the agreement to sell and it was also pointed out that in view of various court orders, till the stage of Section 32(1) of the MID Act, the transaction of registration cannot be restricted. In that application, the petitioners had prayed for registration of the sale deed. In spite of specific application to respondent no.08 SubRegistrar, no cognizance was taken and, therefore, application was made on 19.07.2017 to the respondent no.05 District Collector and also respondent no.06 Land Acquisition Officer. According to the petitioners, there is no bar on the registration of document till the date of issuance of notification under Section 32(1) of the MID Act. Hence, the petitioners have filed the present writ petition for issuance of necessary writ.

3. Heard Mr. U.A. Bhadgaonkar, learned Counsel appearing for petitioners; Mr. S.G. Karlekar, learned Asst. Government Pleader appearing for respondents no.01, 05 to 09 and Mr. S.S. Dande, learned Counsel appearing for respondents no.02, 03 and 04. Perused the documents with the help of learned Counsel appearing for parties.

4. It has been vehemently argued on behalf of the petitioners, that though the notification under Section 32(2) of the MID Act has been issued, it does not prohibit the transactions and till further step is taken under Section 32(1) of the Act, there is no bar for recording registration of the sale transactions. He relied on decision in Writ Petition No. 3800 of 2008 of this Court, dated 11.07.2008, wherein it has been held that when the notification as required under Section 32(1) of the Act has not yet been published; there is no bar on the registration of the document. Similar view was also taken in Writ Petition No. 5992 of 2008 and Writ Petition No. 6300 of 2008 on 21.10.2008.

5. Per contra, it has been argued on behalf of respondent no.04, that the notification under Section 32(2) of the MID Act came to be issued on 11.03.2016. Various lands from village Holhaveli were included in the said notification. Subsequent notifications have also been issued on 04.11.2016 and 03.07.2017. He further submitted that the Division Bench of this Court in Avadhut Rokdoba Shinde & others Vs. The State of Maharashtra & others [2014(2) Bom.C.R.830] has held that the notification under Section 1(3) read with Section 30 of the MID Act is in the nature of notification under Section 4 of the Land Acquisition Act and further taking note of various judgments, namely

(Gurmukh Singh Vs. State of Haryana), reported in J.T. (1995)8 S.C. 208, (Yadu Nandan Garg Vs. State of Rajasthan), reported in 1996(1) S.C.C.334, (Sneh Prabha Vs. State of U.P.), reported in 1996(7) S.C.C. 426, (U.P. Jal Nigam Vs. Kalra Properties (P) Ltd.), reported in (1996)3 S.C.C. 124 and (Mohmadbhai s/o. Miyabhai & others Vs. State of Maharashtra & others), reported in 2000(1) Bom.C.R. 841 (A.B.) : 2000(1) Mh.L.J. 729, it was held that the petitioners therein do not have any legal entitlement to challenge the acquisition proceedings since petitioners are purchasers of small pieces of plots out of notified area after the date of issuance of notification under Section 1(3) read with Section 31 of the MID Act.

6. Further reliance has been placed by the learned Counsel for respondent no.04, on the decision in Meera Sahni Vs. Lieutenant Governor of Delhi & others [(2008) 9 SCC 177] wherein the notifications under Land Acquisition Act were involved. It was held that with issuance of notification under Section 4 of the Land Acquisition Act, any encumbrance created by the owner or any transfer made after issuance of such notification would be deemed to be void and would not be binding on the government. Similar ratio has been laid down in V. Chandrasekaran & another Vs. Administrative Officer & others [(2012) 12 SCC 133]. Further, in a recent pronouncement, the Apex Court in Government (NCT of Delhi) Vs. Manav Dharam Trust & another ((2017)6 SCC 751], similar view has been reiterated. He, therefore, submitted that taking into consideration the ratio in catena of judgments would show that there was a restriction on sale and purchase transaction in the area where the agricultural land belonging to the petitioners is situated and, therefore, the respondents are justified in rejecting the request of the petitioners to register the transaction.

7. The facts of the case reveal that the petitioners, who are owners of the agricultural land, are not disputing the fact that the notice under Section 32(1) of the MID Act was issued on 11.03.2016. It was specifically thereafter promulgated that there shall not be transactions in respect of the lands which have been notified. The purpose for the said notice was obvious and after the said notification was issued, the petitioners have entered into an agreement of sale. Under such circumstance, when the facts are so crystal clear, the point involved in the petition is whether any right is created in favour of either the purchaser or even the seller i.e. petitioners.

8. Similar facts were before this Court in Avadhut Rokdoba Shinde & others (supra). Taking into consideration the earlier decisions of the Hon"ble Apex Court, the Division Bench of this Court has come to the conclusion that the petitioners therein, who were the buyers, do not have legal entitlement to challenge the acquisition proceedings since the petitioners are purchasers of small pieces of plots. It was held that the notification under Section 1(3) read with Section 30 of the MID Act, which is comparable with notification under Section 4 of the Land Acquisition Act, 1894, does not confer any such right. Though, in this case, the distinguishing factor is that the petitioners, who are the

sellers, are not challenging the acquisition, but they want the agreement to sell to be executed definitely with an intention to create a right in favour of the prospective purchaser.

9. Once the notification issued under Section 1(3) read with Section 31 of the MID Act is equivalent to Section 4 of the Land Acquisition Act, further steps those are taken under Section 32 of the MID Act will not create any kind of right in favour of either the purchaser or the buyer. Therefore, the decision in V. Chandrasekaran's case (supra) would be applicable here.

10. Further, the observations in Manav Dharam Trust's case (supra), wherein after taking note of the decision in Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Co-op. Housing Society [(2013) 5 SCC 427], it has been reiterated that such transactions after initiation of acquisition proceedings would be void and would not be binding on the Government. Therefore, when the transaction itself is void, then the Government authorities are justified in rejecting the prayer of the petitioners to register the document.

11. The petitioners have relied on the decisions in Writ Petition No. 3800 of 2008, Writ Petition No. 5992 of 2008 and Writ Petition No. 6300 of 2008 of this Court. However, taking into consideration the legal position clarified by the Hon'ble Apex Court in V. Chandrasekaran's case (supra) and Manav Dharam Trust's case (supra), said reliance by the petitioners on the above said decisions of this Court is devoid of merit. We, therefore, proceed to pass the following order : Order

The Writ Petition is hereby rejected.