

(2000) 06 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 1685 of 1988

Shri Bansilal Narayandas Kankaria and Another

APPELLANT

Vs

The Special Land Acquisition Officer and Others

RESPONDENT

Date of Decision : 08-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Land Acquisition Act, 1894 — Section 4, 48, 48(1), 6

Citation : (2000) 4 ALLMR 127 : (2001) 1 BomCR 136 : (2001) 1 MhLj 638

Hon'ble Judges : B.H. Marlapalle, J;A.P. Shah, J

Bench : Division Bench

Advocate : V.B. Naik, for the Appellant; Rane, A.G.P. for the Respondent Nos. 1 to 4 and K.Y. Mandlik, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—The petitioners have challenged the land acquisition proceedings in respect of agricultural land being Gat No. 12/5 and 12/6 of village Vadgaon Budruk, Taluka Haveli, Dist. Pune, in this petition filed u/s (sic Article) 226 of the Constitution of India.

2. The factual matrix of the case is as set out herein below :---

One Shri Shagi Alias Baban Mahadeo Gandale resident of Shukarwar Peth, Pune, was the owner of agricultural land located in Survey Nos. 12, 18, 19 and 20 admeasuring about 48 Acres in the said village. Out of that land about 31 Acres was in his personal name whereas the balance of about 17 Acres was in the name of his mother. The notification u/s 4 of the Land Acquisition Act (for short "the Act") was issued on 19th January, 1972 and the same was served on the land owner on 3rd May, 1972, for acquisition of land admeasuring 5 Acres i.e. 1 Hecter 79 Acres from Survey No. 12/6 & 23 Acres from Survey No. 12/5. The notification u/s 6 of the Act came to be issued on 12th January, 1973 and on 5th December, 1974 the land owner submitted a representation to the Land Acquisition Officer requesting for deletion of the said land from acquisition. This

representation was rejected on 14th December, 1974. The award came to be passed on 27th October, 1976 and the Special Land Acquisition Officer gave notice to the land owner on 8th January, 1976 for taking possession of the acquired land on 16th November, 1976. This notice was also given to the District Settlement Officer as the land was acquired for resettlement of project affected persons. The possession of the land was taken on 16th November, 1976 and the possession receipt was drawn.

3. The Deputy Director of Rehabilitation (Land) and Collector, Pune, passed an order on 20th October, 1984 and allotted the subject land to respondent Nos. 5 and 6 pursuant to the said order possession of the land was given to these respondents on 29th October, 1984 and they were thus put in possession of the said land by obtaining possession receipt which has been brought on record.

4. The petitioners submitted an application dated 23rd November, 1976 to the Divisional Commissioner, Pune Division, contending therein that the subject land was purchased by them and an agreement of sale was signed on 21st March, 1975. They were not aware of any acquisition proceedings in respect of the subject land and if the land was acquired they will be put to great loss. They, therefore, prayed for deletion of the land from acquisition u/s 48 of the Act. This application was purportedly signed by the original land owner as well as the petitioners and two other family members who were the alleged joint purchasers. The Additional Divisional Commissioner, Pune passed an order on 3rd February, 1977 releasing the land from acquisition. It appears that subsequent to the said order passed by the Additional Divisional Commissioner the petitioners purchased the said land from the original owner by registered sale deed dated 19th August, 1977 and they made an application to the Land Acquisition Officer for change of mutation entry. This application was allowed and the mutation entries were corrected on 10th July, 1979.

5. The order of the Additional Commissioner passed on 3rd February, 1977 withdrawing the subject land from acquisition was found to be incorrect by the Government and, therefore, by an order dated 6th April, 1987 the said order of withdrawal was cancelled by a notification. This, petition was filed on 22nd March, 1988 and came to be admitted by order dated 19th April, 1988 and by way of interim relief the respondents were restrained from disturbing the petitioners possession on the subject land. There cannot be any doubt that this order would be operative only if the petitioners were at the relevant time in possession of the land. During the pendency of this petition respondent No. 5 died on 25th August, 1992. Civil Application No. 713 of 2000 has been filed on 29th January, 2000 to bring the legal representatives of the said respondent on record.

6. The substantial prayer in the petition reads thus :---

"13.(b). that the acquisition proceedings with regard to Gat No. 12/5 and Gat No. 12/6 situated at Vadgaon Budruk, Taluka Haveli, Dist. Pune be kindly quashed

and set aside."

Though by way of an amended prayer interim stay was sought on the order passed by the Government on 6th April, 1987 cancelling the order passed by the Divisional Commissioner on 3rd February, 1977 there is no prayer to quash and set aside the said Government Order. However, the petition has been subsequently amended and challenge to the order dated 6th April, 1987 has been incorporated in the body of the petition, but there is no substantial prayer to quash and set aside the said order.

7. The Resettlement Officer, District Pune, as well as the respondent No. 6 have filed an affidavit and opposed the petition.

8. Before we proceed to deal with the petitioners contentions, we must also note at this stage that the petitioners had filed Civil Suit No. 1304 and 1305 of 1987 challenging the acquisition of the subject land along with an application for interim relief. As the said suits were not maintainable the petitioners approached this Court. In the meanwhile pursuant to the order passed by the Government on 6th April, 1987 the mutation entry showing the rights and possession of respondent Nos. 5 and 6 was effected by order dated 31st October, 1987 and this was challenged by the petitioners by way of an application before the Tahsildar. This application came to be rejected on 15th April, 1988. The petitioners filed R.T.S. Appeal No. 145 of 1988 which also came to be dismissed. The respondent Nos. 5 and 6 claimed that they have been in continuous possession of the subject land since 29th October, 1984 and the petitioners were never in possession of the said land prior to the injunction order of this Court.

9. The petitioners contend that they had created their right to the subject land by way of an agreement of sale executed on 21st March, 1975 and they were not aware of the acquisition proceedings. As no notice was issued to them, the land acquisition proceedings are vitiated as the award was passed on 27th October, 1976 i.e. almost after about 4 years of the publication of the notice u/s 4(1) and 3 years later from the publication of notice u/s 6 of the Act. In respect of the challenge to the order dated 6th April, 1987 passed by the Government it is contended that the said order has been passed without notice to the petitioners and it was, therefore, in utter disregard to the principles of natural justice.

10. It is an admitted position that the petitioners purchased the subject land from the original owner by a registered sale deed dated 19th August, 1977 and the award was passed by the Land Acquisition Officer on 27th October, 1976. It is well established position in law by now that from the date of the award, the land remained vested with the Government as its property. The possession of the subject land was taken on 16th November, 1976. The petitioners did not have ownership right to the subject land prior to 19th August, 1977. The land acquisition proceedings were completed prior to the date of purchase of the subject land by the petitioners and, therefore, they had no locus standi to make an application to the Commissioner for withdrawing the acquisition u/s 48 of the

Act.

11. It has been stated in the affidavit in reply filed by the Land Acquisition Officer as well as the respondent No. 6 that the original owner had not submitted the application to the Competent Authority or the Divisional Commissioner u/s 48 of the Act and the application was submitted by the present petitioners and two of their family members. It is further alleged that the petitioners had forged the signature of the original land owner on the application dated 23rd November, 1976 submitted to the Divisional Commissioner. The learned A.G.P. has submitted the original copy of the said application and it has been signed by five persons, all the signatures are in English, the 1st 4 persons claimed to be the petitioners and 2 of their family members and it is contended that the 5th signature was that of the original owner and the said signature is in English. The Land Acquisition Officer as well as the respondent No. 6 have specifically stated in the affidavit in reply that the original landlord had studied in Marathi and he did not know English. From the original document submitted before us it is seen that the original landlord's Vakalatnama submitted before the Land Acquisition Officer on 7th December, 1974 in favour of Advocate Joshi has been signed in Marathi, his representation dated 6/7th December, 1974 has been signed in Marathi, the statement recorded before the Land Acquisition Officer has been signed in Marathi and the purported agreement for sale dated 21st March, 1975 has also been signed in Marathi. There is no rejoinder filed by the petitioners controverting the allegations made by the Special Land Acquisition Officer as well as the respondent No. 5. It is, therefore, clear that the application submitted on 23rd November, 1976 to the Divisional Commissioner was submitted by the petitioners and two of their family members only and the original owner was not a party to the said application.

12. We must also note that the original owner has not been impleaded as a party-respondent in this petition as well. The Special Land Acquisition Officer indeed in his return has specifically clarified that the land acquisition proceedings had commenced on 3rd May, 1972 and were completed on 16th November, 1976. The provisions of section 11-A of the Act are not applicable in the instant case because the said provisions were incorporated in the Act in the year 1984 and, therefore, there was no question of the proceedings being lapsed by virtue of the said amendment. The petitioners challenge to the land acquisition proceedings in that respect is, therefore devoid of merits. By notice dated 8th November, 1976 the respondent No. 1 had called upon the original owner to receive the compensation on 15th November, 1976 and remain present for handing over possession of the land on 16th November, 1976. The said notice dated 8th November, 1976 was served on the original owner on 12th November, 1976 by affixing the same on the acquired land as the notice sent by registered post was returned unserved. The acquisition proceedings had reached finality when the possession of the land was taken on 16th November, 1976 i.e. on the date when the land was acquired. The petitioners had no ownership title on the subject land prior to 19th August, 1977 and, therefore, their application u/s 48 of the Act filed

before the Divisional Commissioner was not maintainable. The order passed on the said application was without jurisdiction and it was, therefore, rightly cancelled by the State Government vide order dated 6th April, 1987.

13. The learned Counsel for the petitioners urged before us that the matter should be remanded to the State Government as the order dated 6th April, 1987 was passed without affording an opportunity of hearing to the petitioners. We have rejected the said contention and proceeded to decide the matter on merits. On this issue we may usefully refer to the judgment of the Supreme Court in the case of *M.C. Mehta v. Union of India & others* 1999(1) Bom.C.R. (S.C.)765 : A.I.R.1999 S.C.W. 2754 wherein it has been held :---

"It is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of principles of natural justice."

These observations of the Apex Court are squarely applicable to the case at hand.

14. The order passed u/s 48 by the Additional Commissioner on 3rd February, 1977 was also contrary to the provisions of section 48(1) of the Act. The said provision reads as under :---

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.---(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken."

The legislative intent is clear and unambiguous namely an application u/s 48(1) of the Act is not tenable in respect of the acquired land if possession of the said land has already been taken. The Additional Commissioner has thus entertained and allowed the application filed by the petitioners u/s 48(1) of the Act without authority of law and the order passed by him which has been impugned in the petition is void ab initio. The said officer has undoubtedly circumvented the statutory scheme by entertaining the petitioners' application.

15. In the premises the challenge raised to the acquisition proceedings as well as to the order dated 6th April, 1987 passed by the State Government is devoid of any merits and the petition is, therefore, dismissed. The interim order granted by this Court on 19th April, 1988 hereby stands vacated.

16. Rule discharged with no order as to costs.

P.A. to give ordinary copy of this order to the parties.