
(2012) 04 MP CK 0086

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8060 of 2011

Smt. Dev Kumar Ben Shah

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 48, 6

Citation : (2012) 04 MP CK 0086

Hon'ble Judges : Brij Kishore Dubey, J

Bench : Single Bench

Advocate : Rohit Arya, with Mr. Anubhav Jain, for the Appellant; Sudha Shrivastava, Panel Lawyer for Respondents No. 1 to 3 and Shri S. P. Jain, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shri Gangele, J

1. Initially, the petitioner has filed this petition for a direction that the authorities be restrained from taking forcible possession of the land of the petitioner measuring area 2.530 hectares situate at village Mizapur, Tahsil and District Vidisha. Subsequently, by way of amendment, the petitioner also challenged the order dated 23-11-2011 (Annexure P/21) passed by the Collector, Vidisha. The petitioner purchased a land area 2.530 hectares situate at village Mizapur, Tahsil and District Vidisha, vide registered sale deed dated 04-10-1986. A notification was issued u/s 4 of the Land Acquisition Act, 1894 [hereinafter referred to as "the Act"] in regard to acquisition of land, area 20.216 hectares including the land of the petitioner. It was published in the Gazette on 15-12-1995. Subsequently, a notification u/s 6 of the said Act was also published in the Gazette on 10-01-1996.

2. The petitioner challenged the land acquisition proceedings by instituting a suit which was registered as Civil Suit No.7-A/1999. The trial Court dismissed the suit

vide judgment and decree dated 28-04-2000. The trial Court upheld the award dated 04-04-1998 passed by Land Acquisition Officer in regard to acquisition of land. Against the aforesaid judgment and decree dated 28-04-2000, the petitioner preferred an appeal which was also registered as First Appeal No.143/2000. The Division Bench of this Court dismissed the appeal vide judgment dated 06-05-2005. The petitioner preferred a SLP against the said judgment, which was also dismissed by Hon"ble Supreme Court. Then, the petitioner filed a petition before this Court which was registered as Writ Petition No.1523/2006. In the aforesaid petition, the petitioner challenged the acquisition proceedings initiated by Land Acquisition Officer and also the award made. Same was dismissed by learned Single Judge vide order dated 31-07-2007. Against the aforesaid order, a writ appeal was filed which was registered as Writ Appeal No.628/2007. That appeal was also dismissed by this Court vide judgment dated 10-01-2008. On 17-08-2011, the petitioner filed an application before the Collector, Vidisha u/s 48 of the Act for withdrawal of land acquisition proceedings pertaining to the land of the petitioner. Then, the petitioner filed a writ petition before this Court which was registered as Writ Petition No.6389/2011 and prayed for a relief that a direction be issued to the respondent no.2 Collector, Vidisha to decide the aforesaid application. That writ petition was disposed of by this Court vide order dated 23-09-2011, with the following directions:-

In view of this, I deem it proper to permit the petitioner to file an interim application in the aforesaid application which is already preferred by the petitioner on 17.8.2011. In view of urgency shown by the learned counsel for the petitioner, it is directed that if such application for interim relief is preferred by the petitioner, it shall be the duty of respondent no.2 to deal with his interim application within a week and decide his main application preferred u/s 48 of the Act as expeditiously as possible in accordance with law. It is noted that this Court has not expressed any opinion on the merits of the case.

With the aforesaid, the petition stands disposed of.

3. Then, the petitioner submitted another application before the Collector, Vidisha. The Collector, Vidisha vide order dated 23-11-2011 (Annexure P/21) rejected the application. In the meantime, the petitioner filed the present petition and she also prayed for a relief in the present petition for quashing of the order dated 23-11-2011 (Annexure P/21). The petitioner further prayed for a relief that the Collector, Vidisha be directed to record a finding in regard to possession of the petitioner over the land.

4. The learned Senior Counsel appearing on behalf of petitioner, has contended that the possession of the land of the petitioner, had never been taken by the authorities and the Collector has wrongly recorded a finding that the possession was taken. Hence, the Collector be directed to record the possession of the petitioner over the land and thereafter the petitioner would be at liberty to submit an application before the appropriate authority u/s 48 of the Act.

5. Learned Senior Counsel for the petitioner, in support of his contention, has relied on the following judgments:-

- (I) Prahlad Singh and Others Vs. Union of India (UOI) and Others,
- (II) Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another,
- (III) United India Insurance Co. Ltd. Vs. Rajendra Singh and Others,
- (IV) Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.,
- (V) Vijay Shekhar and Another Vs. Union of India (UOI) and Others,

6. On the contrary, learned counsel appearing on behalf of respondent no.4-the Krishi Upaj Mandi Samiti contended that the possession of the land of the petitioner has already been taken over by the Mandi Samiti and awarded a contract for construction of Mandi Samiti. Hence, the petition has no merit.

7. In regard to possession under the land acquisition proceedings, the Hon'ble Apex Court in the case of Brij Pal Bhargava and Others Vs. State of UP and Others 2011 (II) MPWN 65 in paragraph 7 has held as under:-

The second contention raised by Shri Lalit, learned senior counsel is that though the acquisition proceedings are over and the award is also passed, the possession has not been taken at all. The learned counsel pointed out, relying on the decision in Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, that as per the majority view expressed by Bhagwati & Gupta, JJ., it is the physical possession which should be taken in pursuance of the land acquisition and not only symbolical possession or paper possession. The learned senior counsel also relied on the report to suggest that in spite of the acquisition, still the Revenue entries were in favour of the appellants showing their possession and the cultivation by them in respect of the land. Shri Lalit tried to show some photographs suggesting therein that the wicket gate had the lock of the appellants and thus contended that the possession still continues with the appellants. In fact, it is a question of fact as to whether the possession has been taken or not. However, the respondents have produced the possession receipt, where it is suggested that the possession was taken by the officers after going on the spot. Shri Vikas Singh, learned senior counsel appearing on behalf of Mathura Vrindavan Development Authority (respondent no.3) pointed out that it would be impossible for the Collector or Revenue Officers to enter each bigha of land for taking possession thereof and, therefore, the pragmatic approach has to be adopted by the Court while considering as to whether possession has been taken or not. The learned senior counsel also pointed out that the documents show that actual possession was taken. He also tried to point out the photograph suggesting that not only the possession has been taken, but number of other activities of construction were going on at the land including drawing the layout thereof and building the road thereof. The learned senior counsel relied on the reported decision in Sita Ram Bhandar Society, New Delhi Vs. Lt. Governor, Govt. of N.C.T. Delhi and Others, , as also in Dahyabhai Ranchhoddas Dhobi and

Another Vs. State of Gujarat and Others, , where the view has been taken about the pragmatic approach to be adopted by the Courts in deciding as to whether the possession was taken or not. Seeing the report and the orders passed, we are thoroughly convinced that not only the possession was taken, but there are activities going on at the behest of the Mathura Vrindavan Development Authority. This is apart from the fact that this is pure question of fact which has been answered by the High Court in no uncertain terms. In this view of the matter, we are of the clear opinion that even on this count, the appellants must fail.

8. From the facts of the case, it is clear that the petitioner filed multiple proceedings against the acquisition of land of the petitioner. Initially, a civil suit was filed which was dismissed. Thereafter, First Appeal was filed which was also dismissed. Then, an SLP was filed which was also dismissed. Thereafter, the petitioner filed a writ petition before this Court which was dismissed. Then, writ appeal was filed which was also dismissed by Division Bench of this Court. Again, the petitioner filed an application u/s 48 of the Act and in the meanwhile, again the petitioner filed an application and ultimately the Collector, rejected the claim of the petitioner in regard to possession of land and specifically held that the possession of the land has already been taken in the year 2000. A Panchnama has been filed by the petitioner herself. In the aforesaid Panchanama, it has been mentioned that the possession of the land of the petitioner had been taken on 06-12-2000 and the Tehsildar had handed over the possession of land to Mandi Samiti. It is also a fact that the Krishi Upaj Mandi Samiti awarded a contract for construction of Mandi Samiti over the land. It was acquired for the purpose of construction of Mandi Samiti. The work is going to complete within certain months.

9. The contention of the learned Senior Counsel for the petitioner that the possession of the petitioner has never been taken, could not be accepted in view of the findings of facts recorded by the Collector, Vidisha. It is also a fact that Krishi Upaj Mandi Samiti awarded a contract for construction of Mandi Samiti.

10. Apart from this, u/s 48 of the Act the Government has discretion to release the land if it is not required for the purpose for which the land was acquired. If the possession has not been taken, the person of whom the land has been acquired, has no right to seek a direction to lease the land from acquisition.

11. After perusal of the proceedings, in our opinion, the petitioner has filed multiple proceedings. In anyhow, the petitioner wants to get possession of the land, which was acquired by the appropriate authority for the purpose of construction of Mandi Samiti, which is a public purpose. After perusal of the record, in our opinion, the present litigation amount to a vexatious litigation and there is no merit in the petition of the petitioner. Consequently, the petition is dismissed with a cost of Rs. 20,000/-