
(2019) 07 UK CK 0124
In the Uttarakhand High Court
Case No : Special Appeal No. 658 Of 2019

Tara Chand Saini	Vs	APPELLANT
State Of Uttarakhand And Others		RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 3(c), 4, 4(1), 5A, 6, 16, 35, 36, 36(1), 40, 40(1)
(a), 41, 44A, 44B, 48, 48(1)
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 UK CK 0124

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Aditya Singh, B.S. Parihar, V.K. Kohli, Rajni Supyal

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred by the petitioner in Writ Petition (M/S) No. 1890 of 2007 aggrieved by the order passed by the learned Single Judge dated 30.05.2019 dismissing the writ petition.
2. The appellant-writ petitioner filed Writ Petition (M/S) No. 1890 of 2007 seeking a writ of certiorari to quash the order dated 2.02.2007; and for a writ of mandamus commanding the respondent to record the name of the petitioner, pursuant to the decision taken by the respondents to revert the land to tenure-holders, in the light of the Government Orders issued by the State Government.
3. The appellant-writ petitioner's case, as is stated in the affidavit filed in support of the writ petition, is that the subject land was under acquisition by virtue of a notification issued under Section 4 and a declaration issued under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the 1894 Act); the Section 6 declaration, issued on 09.02.1962, records that the purpose of acquisition is for construction of dwelling houses of workmen, and the other work

of setting up a factory for manufacturing heavy electrical equipment; the subject land was not utilized by BHEL; as a result, this vacant land, which in fact belongs to the appellant-writ petitioner, continued to remain in their possession; in 1970, the State Government took a decision that, out of the total acquired land, 135 acres would be reverted to the original tenure-holders; a Government Order was issued on 21.02.1971 for the said purpose; the appellant-writ petitioner submitted a representation on 20.07.2005; pursuant thereto, the respondent authorities issued notices to the appellant-writ petitioner asking him to approach them and deposit the compensation amount, given to his ancestors, in the Treasury; questioning the inaction of the respondents, the appellant-writ petitioner filed Writ Petition (M/B) No. 1225 of 2006; this Court, by its order dated 27.09.2006, directed the third respondent to dispose of the application expeditiously; the third respondent passed the impugned order rejecting the appellant-writ petitioner's claim relying on two judgments of the Supreme Court; a part of the subject land has been reverted to SIDCUL on 10.08.2004; the State Government has, time and again, been issuing Government Orders regulating the activity of reversion of land, which was acquired and not utilized for the purpose for which it was acquired; and, as per the said Government Order, reversion of the land had to be effected, in favour of the appellant-writ petitioner, by the State Government. Several instances of third-party interests being created by BHEL, in favour of others, has been referred to in the writ petition.

4. In the counter affidavit, filed on behalf of BHEL, it is stated that a notification was issued on 08.02.1962 for acquisition of the subject land; in terms of the said notification, possession of the land was delivered to BHEL on 14.03.1962, as was evident from the possession certificate enclosed along with the counter affidavit; once land had been acquired for BHEL, and possession of the said land had been delivered to them, the Government had no power or jurisdiction to withdraw from the acquisition in view of Section 48 of the 1894 Act; some persons had colluded with Sri Ramesh Das, an employee of the Land Acquisition Department, who, without any permission from the competent authority, and even without their knowledge, had started proceedings and had got the compensation amount deposited; when these facts came to the notice of the Collector, an inquiry was caused against Sri Ramesh Das, and it was found that he had acted illegally, because of which he was suspended by the Collector; and deposit, if any made by the appellant-writ petitioner, was of no avail, and was unauthorized and illegal.

5. BHEL, thereafter, denied the allegation that the land had not been put to use since 1962, or that any interest was created in favour of private parties. In so far as the Degree College is concerned, it is stated that it is in the vicinity of BHEL, and the land was given to them for running a Degree College so that the children of employees of BHEL could study there; this was covered by the notification issued in the year 1962, which clearly depicted that the land was required for construction of dwelling houses for workmen; providing a Degree College came under other works which are related to providing educational facilities to the children of employees of BHEL; a housing society was constituted mainly for the

purpose of providing dwelling houses to workmen; no outsider was permitted to apply for allotment, except persons covered under the bye-laws; BHEL has no concern whether the appellant-writ petitioner had applied for allotment or not as, after creation of the housing society, its activities were being carried out by its Managing Committee; the land was not acquired only for industrial purposes; no land was lying vacant; and the subject land was being utilized by BHEL.

6. In his counter affidavit filed in the Writ Petition, the District Magistrate, Dehradun stated that the appellant-writ petitioner sought the benefit of the Government Order dated 21.02.1971 for the first time in the year 2005; the inordinate delay has not been explained; once land is acquired, the same vests with the Government free from all encumbrances; the land, acquired for a public purpose, can only be utilized for another public purpose; and the Supreme Court in *State of A.P. and another vs. Syed Akbar* : (2005) 1 SCC 558, has held that land, once acquired, cannot be re-assigned or re-conveyed to the original owner on the basis of any executive order; the purpose of acquisition was the establishment of BHEL; in Writ Petition (M/B) No. 1225 of 2006, the appellant-writ petitioner had confined his prayer only to his application addressed to the Special Land Acquisition Officer dated 12.04.2006, and had sought a direction for the said application to be disposed of expeditiously; the notices issued by the officer concerned, directing deposit of the amount, was without jurisdiction; the concerned Assistant Sri Ramesh Das, who was involved in issuance of the notices and for deposit of compensation through the Treasury, was found guilty and was punished accordingly; the Government Order dated 21.02.1971 was sought to be relied on in the year 2005, which was an unduly belated act.

7. In the order under appeal, the learned Single Judge noted that possession of the acquired land was handed-over to BHEL in the year 1962, and reliance was placed by the petitioner on the letter dated 21.02.1971 issued by the Joint Secretary, Industry Department, Government of U.P; the appellant-writ petitioner's request, for return of land, was rejected by the Special Land Acquisition Officer, by his order dated 02.02.2007, on the ground that land, once acquired for a public purpose, could not be returned back to the original tenure-holder; the State of U.P. had issued Government Order dated 21.02.1971 which provided that, in case a part of the acquired land was lying unutilized with BHEL, then the previous owners could get their lands back by depositing the amount of compensation received by them; if a large chunk of land was acquired for a public purpose, a part of which remains unutilized, then such unutilized land could not be returned back to the erstwhile owners; and it could be used only for some other public purpose. The learned Single Judge relied on the judgments of the Supreme Court in *State of Kerala vs. M.Bhaskaran Pillai* : (1997) 5 SCC 432; *C. Padma and others vs. Dy.Secretary to the Government of Tamil Nadu and others* : (1997) 2 SCC 627; *Mahadeo vs. State of U.P.* : (2013) 4 SCC 524; and on two judgments of this Court in Writ Petition (M/S) No. 1047 of 2008 dated 05.11.2008 and Writ Petition (M/S) No. 244 of 2009 dated 28.05.2015, to hold that the application made by the appellant-writ petitioner was misconceived; and

the Special Land Acquisition Officer, Haridwar had rightly rejected the same by his order dated 02.02.2007.

8. Sri Aditya Singh, learned counsel for the appellant-writ petitioner, would submit that acquisition, in the present case, was for the benefit of BHEL, a company incorporated under the Companies Act; Chapter VII of the Land Acquisition Act prescribes the procedure for acquisition of land for companies; Section 44-A places restrictions on transfer of the acquired land; since BHEL has not obtained sanction of the State Government, while creating third-party interest in favour of several others, they had acted illegally in making such allotment; the Government Order dated 21.02.1971 is binding on the Government; having taken a conscious decision to give back the unutilized land to the original owners, the State Government cannot now be heard to contend that they cannot do so; the appellant-writ petitioner had also deposited the amount, as directed by the authorities, representing the compensation paid to them earlier; and, in the light of the law declared by the Supreme Court in *Srinivasa Cooperative House Building Society Ltd. vs. Madam Gurumurthy Sastry and others* : (1994) 4 SCC 675, the subject land should be returned to the appellant-writ petitioner.

9. Sri B.S. Parihar, learned Standing Counsel for the State of Uttarakhand, would submit that the writ petition, as filed, is hit by inordinate delay and laches; once land is acquired, and possession is taken, the land vests in the Government; Section 48 of the Land Acquisition Act prohibits the State Government to withdraw from acquisition; even if the land, acquired for a public purpose, remains unutilized in part, such land can be utilized for some other public purpose, and cannot be returned to the erstwhile owner from whom the land was acquired; and the action of the respondents, in rejecting the appellant-writ petitioner's claim, is fully justified.

10. Sri V.K. Kohli, learned Senior Counsel appearing on behalf of respondent no. 5, would place reliance on the judgment of a Division Bench of this Court, in Writ Petition (PIL) No. 77 of 2011 and batch dated 21.05.2015, to submit that all the issues raised in this writ petition are squarely covered by the said Division Bench judgment; the subject land was acquired, and possession thereof was delivered to BHEL as early as on 14.03.1962; the appellant-writ petitioner cannot rely on the letter of the Joint Secretary, Industry Department, Government of U.P. dated 21.02.1971 issued nearly nine years after possession of the land was delivered by the State Government to BHEL; it is not open to the State Government to unilaterally come to conclusion that surplus land should be returned; once land is acquired for a public purpose, which in the present case is for the establishment of the BHEL unit and for providing residential accommodation to its workmen, it is not open to the State Government to withdraw from acquisition, or to take possession of the subject land from BHEL; BHEL has not allotted land in favour of any outsider; the entire land is still in the possession of BHEL; a part of the land was, no doubt, handed-back to the State Government for establishment of

SIDCUL; construction of a school, within the compound of the Corporation, is for the purpose of providing educational facilities to the children of its employees; this would not attract the ingredients of Section 44A of the 1894 Act; and, consequently, no interference is called for with the order under appeal. He would also rely on the judgment of the Supreme Court in *Mahadeo vs. State of Uttar Pradesh and others* : (2013) 4 SCC 524 in this regard.

11. It is not in dispute that, pursuant to the acquisition proceedings being initiated under Section 4(1) of the Land Acquisition Act, 1894, and a declaration being issued under Section 6 vide proceedings dated 9.02.1962, possession of the subject land was delivered to BHEL on 14.03.1962. Those, from whom land was acquired, were all paid compensation in terms of the award passed pursuant to the Section 4 Notification dated 15.11.1961, and the Section 6 Declaration dated 09.02.1962.

12. The State Government had acquired the subject land for the public purpose of construction of dwelling houses for workmen, and for other works relating to the setting up of a factory for the manufacture of heavy electrical equipment by BHEL, New Delhi, which is a Central Government public sector undertaking.

13. The entire case of the appellant-writ petitioner is based on the letter of the Joint Secretary, Industry Department, Government of U.P. dated 21.02.1971 wherein it is stated that surplus land, remaining unutilized with BHEL, could be taken back, and given to the land-owners. While the validity of such a letter, issued nearly nine years after possession of the subject land was delivered to BHEL on 14.03.1962, is debatable, the learned Single Judge has, in our view rightly, observed that no such executive order could have been issued by the State Government directing such surplus land to be returned back to the original land-owners, since land acquired for a public purpose can always be utilized for another public purpose, and no right vests in the original land-owners, after they are paid compensation, an award is passed and possession is delivered, to contend that the land should be returned back to them.

14. Part VII of the 1894 Act relates to acquisition of land for companies and, while several provisions have been made, in the said Chapter, for acquisition of land for the benefit of companies, Section 44A of the 1894 Act places restrictions on transfers and, thereunder, no company, for which any land is acquired in this Part, shall be entitled to transfer the said land, or any part thereof, for sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government. Even if creation of third-party interests by BHEL is held to be in violation of Section 44-A, that does not confer any right on the appellant-writ petitioner to claim that the said land should be returned back to them. Section 48(1) of the 1894 Act stipulates that, except in the case provided for in Section 36, the Government shall be at liberty to withdraw acquisition of any land of which possession has not been taken. Section 36 confers power on the State Government to enter and take possession, and, under Section 36(1), on payment of such compensation, or on executing such agreement, or on making a

reference under Section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice. The power conferred on the State Government to withdraw from acquisition is only before possession of the subject land has been taken by it. In the present case, possession of the subject land was taken by the State Government, and possession thereof was delivered to BHEL on 14.03.1962, more than half a century ago, to be precise 56 years ago. As the State Government cannot withdraw from acquisition in the light of Section 48 of the 1894 Act, the appellant-writ petitioner cannot claim any right for the subject land to be handed back to him.

15. Reliance placed by Sri Aditya Singh, learned counsel for the appellant-writ petitioner, on the judgment of the Supreme Court, in Srinivasa Cooperative House Building Society Ltd. is also misplaced. The very acquisition of land was subjected to challenge before the High Court which had quashed the notification under Section 4(1), and the Declaration under Section 6, of the 1894 Act primarily on the ground that the respondents were small farmers; the appellant-society consisted of members who could afford to construct houses by themselves; and acquiring the lands of poor small farmers, for the benefit of the rich was arbitrary and illegal. On the company, for whose benefit the subject land was acquired by the Government, preferring an appeal, the Supreme Court, in Srinivasa Cooperative House Building Society Ltd, observed that, if the purpose envisaged under the Act was not served, then the exercise of the power to issue the declaration, under Section 6 of the 1894 Act, must be held to be a colourable exercise of power, though not with evil motive; the appellant was a private society, and it was not for any of the purposes under Section 40(1)(a) or under Section 3(c) of the Act; it was for the transfer of the acquired land to the members of the society who now, as per the records placed before it, appeared to be Advocates, Chartered Accounts, Businessmen, and were alleged to be in possession of more than one house; the government did not bestow its thought, while considering the report under Section 5A; contribution of Rs. 100/- each from the public exchequer was within the teeth of Sections 40, 41, 44A and 44B of the Act; and the acquisition, and the declaration published under Section 6, was a colourable exercise of power.

16. In Srinivasa Cooperative House Building Society Ltd., the proceedings initiated for acquisition of land, for housing purposes, was itself questioned on the ground that such acquisition was arbitrary and illegal. In the present case, acquisition was completed in the year 1962 and, after an award was passed, the subject land was handed over to BHEL on 14.03.1962. Neither the notification under Section 4(1) nor the declaration under Section 6, or even the award made thereunder, have been subjected to challenge, at any time, before this writ petition was filed, or even in the present writ proceedings. Reliance placed by Sri Aditya Singh, learned counsel for the appellant-writ petitioner, on stray observations in the judgment of the Supreme Court in Srinivasa Cooperative House Building Society Ltd, and in reading them out of context, is of no avail.

17. The provisions of the 1894 Act prescribe the mode and manner of acquisition of land by the Government and, while Chapter VII prescribes the procedure for acquisition of land in favour of companies, there is no provision, thereunder, which stipulates reversion of land, to original land-owners, merely on the ground that a part of the land has not been utilized by the company for the public purpose for which it was acquired.

18. On the other hand, Section 48 of the Land Acquisition Act prohibits the State Government from withdrawing from acquisition, once possession of the land has been taken. It defies reason that the Joint Secretary of the State Government should issue proceedings dated 21.02.1971, (nearly nine years after possession of the land was taken by the State Government, and was delivered to BHEL) for resumption of the subject land, and for it to be delivered back to the appellant-writ petitioners.

19. It is, ex facie, evident that the said letter of the Joint Secretary dated 21.02.1971 falls foul of Section 48 of the Land Acquisition Act. In any event, such executive instructions cannot be enforced in writ proceedings under Article 226 of the Constitution of India. (JR Raghupathy vs. State of A.P.: (1988) 4 SCC 364; and Union of India vs. S.L. Abbas : (1993) 4 SCC 357).

20. Yet another reason why the writ petition is liable to be dismissed is because of inordinate delay and laches. Even according to the appellant-writ petitioner, after the so called letter of the Joint Secretary dated 21.02.1971, they made a representation to the authorities more than thirty four years thereafter in the year 2005.

21. While it is no doubt true that they invoked the jurisdiction of this Court by filing Writ Petition (M/B) No. 1225 of 2006, the fact remains that, in this writ petition filed on 26.09.2006, BHEL was not even arrayed as a respondent. The order passed by this Court dated 27.09.2006 was, evidently, at the stage of admission itself. After holding that the prayer to direct the third respondent to consider the application submitted by the appellant-writ petitioner was innocuous, the Division Bench directed the third respondent to dispose of the application dated 12.04.2006 expeditiously in accordance with law. In the light of this order, the representation of the appellant-writ petitioner was considered, and was rejected by the order impugned in the writ petition. No explanation is forthcoming as to why the appellant-writ petitioner chose to wait for nearly three and half decades to seek implementation of the letter of the Joint Secretary dated 21.02.1971, by way of a representation in the year 2005. We are satisfied, therefore, that the writ petition is hit by inordinate delay and laches.

22. The Supreme Court, in State of M.P. Vs. Nandlal Jaiswal: (1986) 4 SCC 566, observed:

".....Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy

and the indolent of the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction....." (emphasis supplied)

23. We also find considerable force in the submission of Sri V.K.Kohli, learned Senior Counsel appearing on behalf of the 5th respondent, that the subject matter of this writ petition is covered by the order of the Division Bench of this Court in Writ Petition (PIL) No. 77 of 2011 and batch dated 21.05.2015. In the batch of writ petitions before the Division Bench, a writ of certiorari was sought to quash the illegal allotment of the agricultural land made in favour of the respondent organizations, other than BHEL; a writ of mandamus directing the State Government to release 3259.815 acres of land which was wrongly distributed by the Government, and also around 1500 acres of land which was vacant and was still in the possession of BHEL, in favour of the land owners; and for a mandamus directing an inquiry to be caused in this regard.

24. The Division Bench noted that land of about 3410.342 acres was still in the possession of BHEL; in *C. Padma and others vs. Deputy Secretary to the Government of Tamil Nadu and others* : (1997) 2 SCC 627, the Supreme Court had held that the claimants were not entitled to seek restitution of possession on the ground that either the original public purpose had ceased to be in operation, or the land could not be used for any other purpose; the appellant-writ petitioner, who claimed to be the previous owner of the land prior to acquisition, did not have a legal right to get back the land; in *Leela Wanti and others vs. State of Haryana and others* : 2011 (13) SCALE 1, the Supreme Court had rejected the claim on the ground of laches; the Supreme Court had further observed that, in view of Section 16 of the Land Acquisition Act, the acquired land vested in the State Government free from all encumbrances; and the Supreme Court had also held that the land, acquired for a particular public purpose, could be utilised for any other public purpose.

25. The Division Bench, thereafter, relied on *State of Kerala vs. M. Bhaskaran Pillai* : (1997) 5 SCC 432 to hold that, 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; it could be better

utilized for the public purposes envisaged in the directive principles of State policy; the Supreme Court had struck down the executive order holding it as invalid, since it was not in consonance with the provisions of the Land Acquisition Act; in the light of the judgment in *Mahadeo vs. State of U.P.*, if land was acquired for a public purpose, after the public purpose was achieved, the same could be used for any other public purpose; and, in no circumstances, could it revert back to the erstwhile owner. The writ petitions were dismissed by the Division Bench.

26. In *Mahadeo vs. State of U.P.* : (2013) 4 SCC 524, the question which fell for consideration before the Supreme Court was whether, on the request of the Meerut Development Authority seeking approval from the State Government to withdraw the acquisition, a writ of mandamus could be issued directing the State or the MDA to denotify or de-requisition the land which was acquired after following the due process of law, and an award to that effect had been passed by the Special Land Acquisition Officer. The Supreme Court, after relying on its earlier judgments in *State of A.P.* and another vs. *Syed Akbar* : (2005) 1 SCC 558, and *State of Kerala vs. M. Bhaskaran Pillai* : (1997) 5 SCC 432, held that merely because some land was left at the relevant time, that did not give any right to the Authority to send a proposal to the Government for release of the land in favour of the land owners, and the directions issued by the High Court, to the authorities to pass a resolution, was unwarranted.

27. While Sri V.K. Kohli, learned Senior Counsel, would also draw our attention to the fact that deposit of the amount, by the appellant-writ petitioner with the Treasury, was because of the illegal act of an Assistant in the Land Acquisition Department, against whom disciplinary action had been taken, it wholly unnecessary for us to dwell on this issue, since the appellant-writ petitioner can claim no right of reversion of the land acquired for a public purpose. Suffice it to hold that, in case BHEL has violated Section 44A of the 1894 Act, this order shall not disable the State Government from taking necessary action for such violation, if any, in accordance with law. That does not, however, mean that the State Government can direct that the land acquired by it, and possession of which was delivered to BHEL on 14.03.1962, should be redelivered to the original owners fifty years thereafter. In case, the appellant-writ petitioner has deposited any amount in the Treasury, which itself is unauthorized, the order now passed by us shall not disable them from seeking refund of the amount, they had deposited with the Government in the year 2005.

28. For the reasons aforementioned, we are satisfied that the order under appeal does not suffer from any legal infirmity warranting interference in an intra-court appeal. The Special appeal fails and is, accordingly, dismissed. No costs.