
(1993) 01 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 2556 of 1984

Vitthalaldas Gandhi

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-01-1993

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Land Acquisition Act, 1894 — Section 17(1), 4, 48(1), 6, 9(1)

Citation : (1996) 2 BomCR 88 : (1993) 95 BOMLR 506

Hon'ble Judges : H.W. Dhabe, J;G.D. Patil, J

Bench : Division Bench

Advocate : V.G. Daga, for the Appellant; Rajeev Madkholkar, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—An interesting question as to the construction of section 48(1) of the Land Acquisition Act, 1894 (for short "the Act") has arisen for consideration in the instant writ petition.

2. The facts are that the following lands viz. Survey No. 83-A area 1 hectare 96 acres, with mango trees. Survey No. 83-B, area .68 acres with mango trees, and Survey No. 83-C, area .78 acres with mango trees, all of village Thadipaoni, tahsil Narkhed, district Nagpur, the total area admeasuring 8.73 acres of land belonging to the petitioner were sought to be acquired by the State. It appears that initially there was a proposal for requisitioning the above land of the petitioner for resettlement of flood-affected persons of village Thadipaoni, tahsil Narkhed, district Nagpur. Although initially the petitioner had raised objections, he, lateron, by his letter dated 12-6-1982, gave his consent for giving his aforesaid land, whose survey numbers given in the said letter are old survey numbers, to the Government for the purpose of resettlement of flood-affected persons of village Thadipaoni. He only expressed in the said letter dated

12-6-1982 that he should be paid adequate compensation for the same.

2A. The Sub-Divisional Officer / Land Acquisition Officer, Katol, thereafter, addressed a letter to the Collector, Nagpur, on 17th June, 1982 that the petitioner was ready to deliver advance possession of the above land and therefore instead of requisitioning the same, the proposal should be approved for acquisition of his aforesaid land.

Accordingly, by his letter dated 9-7-1982 the Collector permitted the Sub-Divisional Officer, Katol to take advance possession of the land and initiate land acquisition proceedings for acquisition of the same. He made it clear that it was not necessary to requisition the said land. It is not in dispute that the possession of the suit land was thereafter taken on 12-7-1982. It is then that the notification u/s 4 of the Act was issued on 14-7-1982 which was published in the Government Gazette on 26-8-1982. However, no steps were taken to issue the notification u/s 6 of the Act. On the other hand, the notification issued u/s 4 of the Act was cancelled by the Sub-Divisional Officer/Land Acquisition Officer, Katol on 31-3-1984. Before issuing the above order cancelling the notification dated 14-7-1982 u/s 4 of the Act, the Sub-Divisional Officer/Land Acquisition Officer, Katol, by his letter dated 7-2-1984, informed the petitioner that since there was orange garden upon the suit-land and since there was other non-agricultural land available at Thadipaoni, there was no need felt to acquire the suit land. Therefore, by his letter dated 7-2-1984 receipts showing taking of possession of the suit land from the petitioner were cancelled.

3. Feeling aggrieved with the withdrawal from the acquisition proceedings in respect of the suit land the petitioner has preferred the instant writ petition seeking the relief that this Court should quash the notification dated 31-3-1984 by which the notification u/s 4 of the Act was cancelled. The petitioner has also prayed that the declaration should be granted that the withdrawal of the State from the acquisition proceedings was entirely illegal and that the respondents should be directed to proceed with the acquisition proceedings in regard to the suit land. The respondents have opposed the petition by filing their return.

4. The principal contention raised on behalf of the petitioner in this writ petition is that since possession of the suit land is taken by the respondents, it cannot withdraw from the acquisition proceedings as provided u/s 48(1) of the Act and that it is bound to acquire the suit land. As regards taking of possession, there is dispute between the parties. According to the petitioner as per receipts of possession and panchanama executed by the S.D.O. and Naib Tahsildar, the physical possession of the suit land is taken by the State whereas according to the respondents it is only paper possession which is taken and the physical possession is with the petitioner himself. In support, the respondents have relied upon the crop statements in which the name of the petitioner appears as cultivator and in some years he is shown to have mortgaged the suit land.

5. Turning to the principal question raised on behalf of the petitioner viz. that

since possession has been taken, it is not open to the State Government to withdraw from the acquisition as provided u/s 48(1) of the Act, the said contention, in our view, stands answered against the petitioner by three judgments of the Supreme Court to which we will hereinafter refer. However, before turning to the judgments of the Supreme Court, it would be useful to refer to the scheme of the Act for a proper interpretation and effect of section 48(1) of the Act. Needless to state that the Act enacts legislation for compulsory acquisition of the land for public purposes and for companies. The matter as regards acquisition falls broadly into two stages. The first is determination of public purpose and the second is of the actual acquisition of land by determination and payment of its compensation to the owner and taking its possession from him.

6. Section 4 of the Act provides for preliminary notification to be issued to show that the land in question is needed for a public purpose or for a company. When the notification to that effect is issued u/s 4(1) of the Act, the Officers concerned can enter the land to ascertain the extent of the land needed. While issuing the notification u/s 4(1) of the Act, notice of the same is required to be given to the person interested in the suit land. It is open to such interested person to raise objections to the acquisition of his land as provided u/s 5-A of the Act. After deciding the objections, the Land Acquisition Officer is required to submit his report to the Commissioner as per sub-section (2) of section 5-A of the Act. After considering his report, the Commissioner is empowered to issue a notification u/s 6(1) of the Act declaring that the land is needed for a public purpose. Once such a declaration is made u/s 6(1) of the Act, section 6(3) thereof makes it a conclusive evidence of the fact that the land is needed for a public purpose or for a company.

7. After such a declaration of the public purpose is made, then starts the second phase wherein u/s 7 of the Act, the Appropriate Authority of the State Government is required to direct the Collector to take order of the acquisition of the land. Section 9 of the Act then requires the Collector to give notice to the persons interested, so that they can lodge claims for compensation for the acquisition of their land. Section 11 of the Act provides for an inquiry into the claims about compensation after which the Collector has to pass an award determining the compensation payable for the land.

8. It is then material to see that when the award determining compensation is passed u/s 11 of the Act, a stage is reached for taking possession of the land as provided u/s 16 of the Act. In fact the heading of sections 16 and 17 is "Taking Possession". Section 16 of the Act provides for taking possession after the award is made and on taking possession, after the award is made, the land absolutely vests in the Government free from all encumbrances. Section 17 of the Act deals with special powers in cases of urgency. If it is necessary to take possession of the land immediately because of urgency, section 17(1) of the Act provides that the Collector can take possession of the land after the expiration of fifteen days

from the publication of the notice u/s 9(1) of the Act although no award is passed by him till then. On taking possession in cases of urgency after the expiry of 15 days from the publication of the notice u/s 9(1) of the Act, the land vests absolutely in the State Government free from all encumbrances. In cases of urgency envisaged by sub-section (1) of section 17 of the Act, it is pertinent to see that as provided in sub-section (4) of the said section 179 the Act, section 5-A of the Act under which a right is created in the persons interested in the land to raise objections to its acquisition and to be heard in regard to the same can be made inapplicable by the Government or as the case may be by the Commissioner.

8A. It is in the context of the above provisions of the Act that we have to read section 48(1) of the Act relating to withdrawal of the State from the acquisition of any land. Section 48(1) of the Act is as follows :--

"48(1) Except in the case provided for in section 36, the Government (or the Commissioner) shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken."

9. The learned Counsel for the petitioner has urged before us that section 48(1) of the Act does not state how the possession should be taken. The submission, therefore, is that the possession taken by consent prior to issuance of the notification u/s 4 of the Act would be possession within the meaning of the said provision and the Government, therefore, will be precluded from withdrawing from the acquisition. In support of his aforesaid submission, the learned Counsel for the petitioner has relied upon the following judgments.

1. State of Tamil Nadu and Others Vs. Narendra Dairy Farms (P) Ltd. and Another, . 2. Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, . 3. The Revenue Divisional Officer, Guntur Vs. Vasireddy Rama Bhanu Bhupal and Others, . 4. S. Bavajan Sahib Vs. State of Kerala and Others, . 5. Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, ; and 6. Patel Virchandbhai Madabhai Vs. State of Gujarat and Another, .

9A. However, in our view except the judgment of the Supreme Court in the case of Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, , no other judgment cited supra is relevant to the point. As stated above, the above question is covered by the three judgments of the Supreme Court, one of which is the above judgment. The other two judgments are State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, and Jethmull Bhojraj Vs. State of Bihar and Others, .

10. Turning first to the Judgment of the Supreme Court in the case of the State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , the question considered therein was whether a number of declarations u/s 6 of the Act can be made successively in respect of different pieces of lands included in locality specified in the notification issued u/s 4 of the Act. The Supreme Court answered the said question in the negative because of which it appears that

there was amendment made in section 6(1) of the Act by Act No. 13 of 1967 to enable the Government to make different declarations in respect of parcels of land covered by the same notification u/s 4(1) of the Act. In considering the said question the scheme of the relevant provisions of the Act is considered by the Supreme Court. It is held by the Supreme Court in the said case that section 48(1) of the Act is not the only method in which the Government can withdraw from the acquisition because it can do so by cancelling the notifications under sections 4 and 6 of the Act by virtue of its power u/s 21 of the General Clauses Act, which power it can exercise before it directs the Collector to take action u/s 7 of the Act.

10A. Perusal of para 19 of the Judgment cited supra would show that before taking possession, it is open to the Government to cancel the notifications issued u/s 4 and/or section 6 of the Act. It is further observed in the said judgment that section 48(1) is a special provision for those cases where the proceedings for acquisition have gone beyond the stage of issue of notice u/s 9(1) of the Act. It is thus clear from the said para that before the stage of section 7 i.e. the order for acquisition is made, and the notice is issued u/s 9(1), it is open to the Government to cancel the notifications issued u/s 4 and/or 6 of the Act by virtue of the power u/s 21 of the General Clauses Act.

11. We now proceed to consider the ratio of the Judgment of the Supreme Court in the case of *Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma*, upon which both the parties have placed their reliance in support of their rival submissions. The facts in the said case would show that possession of the land was taken in the said case prior to the issuance of notification u/s 4 of the Act. However, thereafter the procedure under the Act was followed by issuing notifications under sections 4 and 6 and a notice u/s 9(1) of the Act. It is pertinent to see that in the notification u/s 6 of the Act urgency clause was invoked and the procedure u/s 5-A was dispensed with by taking recourse to sub-sections (1) and (4) of section 17 of the Act. In the above facts, the Supreme Court held in para 4 of its Judgment that as the State Government had issued notification under sections 17(1) and (4) of the Act, the possession which had been previously taken must, from the date of expiry of 15 days from the publication of the notice u/s 9(1) of the Act, be deemed to be in possession of the Government. It has repelled the submission that if the possession is taken illegally or under unlawful transaction then after the notification is issued u/s 17(1) of the Act, the land does not vest in the Government free from all encumbrances from the date of expiry of 15 days from the publication of notice. It has thus made it clear that after issuance of notification u/s 17(1) of the Act, and on the expiration of 15 days from the publication of notice u/s 9(1), the possession previously obtained would be deemed to be the possession of the Government u/s 17(1) of the Act by reason of which the land would vest in the Government free from all encumbrances.

12. What is material for our purpose to be seen in the Judgment cited supra is

para 6 thereof in which it is held by the Supreme Court that the power to cancel a notification for compulsory acquisition is not affected by section 48(1) of the Act and by notification u/s 21 of the General Clauses Act, the notifications issued under sections 4 and 6 can be cancelled. It is however, made clear that the said power u/s 21 of the General Clauses Act cannot be exercised after the land statutorily vests in the State Government.

12-A. It is pertinent to see that it is because the land vests in the State Government on taking possession as provided under sections 16 or 17(1) of the Act that the process of acquisition which is thereby complete is made irreversible by section 48(1) of the Act. The words used in section 48(1) for allowing withdrawal from the acquisition therefore are "of which possession has not been taken" since it is clear that on taking possession, as provided u/s 16 or section 17(1) of the Act, the land vests in the Government free from all encumbrances which means that it becomes the owner of the land and therefore there is no question of its withdrawal from the acquisition. Once the land vests in the Government, merely the mode of withdrawal from the acquisition is not enough to revert the land to the original land holder and something more would need to be done for restoring the land to the land holder viz. under the Ordinary law it would be necessary to execute the deed of reconveyance as per law in favour of the original owner of the acquired property. This is the view taken by the Supreme Court in the case of *Jethmull Bhojraj Vs. State of Bihar and Others*, .

13. It is pointed out by the Supreme Court in para 10 of the Judgment in the case cited supra that unless and until the possession is taken under either of the provisions of section 16 or section 17(1) of the Act the lands notified for acquisition do not vest in the Government. It is then stated in para 11 of the Judgment cited supra that possession referred to in section 48(1) necessarily is the possession taken either u/s 16 or u/s 17(1) of the Act which would clearly show that the said possession as pointed in para 10 of the Judgment (supra) is for the purpose of vesting of the title of the land in the State Government. Para 12 of the Judgment then shows that ordinarily possession of the land notified for acquisition is taken only when an award is passed u/s 11 of the Act and not before it. However, section 17(1) of the Act provides for an exception to the said rule in so far as possession in cases of urgency, if the Government so directs, the Collector can, though no award has been made u/s 11 of the Act, on the expiration of 15 days from the publication of the notice mentioned in section 9(1), take possession of the land whereupon it vests absolutely in the Government free from all encumbrances.

14. As regards the reliance placed upon its judgment in the case of *Lt. Governor of Himachal Pradesh and another v. Sri Avinash Sharma*, (cited supra), it was pointed out in the judgment cited supra that the ratio of the said case was distinguishable since in the said case although possession of the land in question had been taken even before the acquisition proceedings had started, the appropriate proceedings u/s 9(1) and section 17(1) were also taken in the said

case and it was in these circumstances that the Supreme Court had held in the said case that as the notification u/s 17(1) and 4 was issued by the State Government, the possession which had previously been taken must, on the date of expiry of 15 days from the publication of the notice u/s 9(1), be deemed to be the possession of the Government. In the case before it, however, it was pointed out that no material was placed before the Court to show that action u/s 17(1) had been taken. The Supreme Court, therefore, upheld the action of the State Government in the said case to withdraw from the acquisition some of the lands earlier notified under sections 4 and 6 of the Act.

15. In the light of the above judgment of the Supreme Court and the relevant provisions of the Act, turning to the facts in the instant case, although the possession of the suit land was taken in advance on 12-7-1982 before the acquisition proceedings were started by issuance of notification u/s 4 of the Act on 14-7-1982, the said acquisition proceedings did not proceed beyond the stage of the issuance of the said notification u/s 4 of the Act, because thereafter by a notification dated 31-3-1984, the said notification u/s 4 of the Act dated 14-7-1982 was cancelled. Thus, in the instant case, even the notification u/s 6 of the Act was not issued.

16. The above facts would show that this is not a case where action u/s 17(1) of the Act was taken. Since there was no notification issued u/s 6 of the Act there was no question of taking any steps to determine compensation and therefore, pass any award u/s 11 of the Act. Possession of any land notified for acquisition which is envisaged by section 16 of the Act is possession which is taken when the Collector had made an Award u/s 11 of the Act and not before it as held by the Supreme Court in the case of *M/s. Jetmull Bhojraj v. The State of Bihar*, (cited supra). Since no award is passed u/s 11 of the Act in the instant case, it cannot be said that the advance possession taken by the State Government is deemed to be the possession of the Government within the meaning of section 160 of the Act. Applying even the ratio of the Judgement of the Supreme Court in the case of *Lt. Governor of Himachal Pradesh and another v. Sri Avinash Sharma*, (cited supra), it cannot be held that the suit land vested in the State Government in the instant case.

17. The process of acquisition was thus reversible in the instant case by cancelling the notification u/s 4 of the Act by virtue of the power u/s 21 of the General Clauses Act. We cannot thus accept the submission made on behalf of the petitioner that since the possession of the suit land was taken by the State Government in the instant case, it could not withdraw from its acquisition and therefore, the notification dated 31-3-1984 cancelling the notification u/s 4 of the Act was illegal.

18. It is lastly urged on behalf of the petitioner that by issuing a writ of Mandamus, we should quash and set aside the notification dated 31-3-1984 by which the notification dated 14-7-1982 u/s 4 of the Act was cancelled and further direct the State Government to follow the procedure under the Act to complete

the acquisition of the suit land. It is material to see that before the land under acquisition vests in the Government free from all encumbrances on taking its possession as provided u/s 16 or section 17(1) of the Act, when there is an option to the State Government to withdraw from the acquisition either u/s 48(1) of the Act or by virtue of its power u/s 21 of the General Clauses Act by cancelling the notifications under sections 4 and 6 of the Act, a writ of mandamus cannot be issued in this regard so as to curtail the discretionary power of the Government to cancel the notifications issued under sections 4 and 6 of the Act or to withdraw from the acquisition. We cannot, therefore, accept the above contention raised on behalf of the petitioners that since the possession of the land was taken by the State Government, we should compel it to complete the acquisition proceedings under the Act.

19. It is made clear that although the petitioner cannot get any relief as sought for by him in this writ petition, it is open to him to claim damages in accordance with law, if he is so otherwise entitled to, if he has suffered any loss because possession was taken by the Government as alleged by him.

20. In this view of the matter, it is not necessary for us to go into the question whether there was only paper possession taken or even physical possession of the land taken by the State Government because as held by us above even assuming that physical possession was taken, since the acquisition proceedings had not reached the stage as contemplated by section 16 or section 17(1) of the Act, the advance possession taken by the State would not have the effect of vesting the title in the State Government as envisaged by the aforesaid provisions of the Act and therefore, the process of acquisition was in the instant case reversible by taking recourse to section 21 of the General Clauses Act. The learned Counsel for the petitioner has brought to our notice certain provisions of the Act conferring the statutory benefits, such as interest etc. (See sections 28 and 34) of the Act, where the said benefits are relatable to the date of possession. We however, fail to see how the said provisions have any relevance in considering the question of interpretation and effect of section 48(1) of the Act or upon the question of cancellation of notifications under sections 4 and 6 of the Act by taking recourse to section 21 of the General Clauses Act.

21. In the result, the instant writ petition fails and is dismissed. However, in the circumstances of the case, there would be no order as to costs.