

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6240 OF 2012

Smt. Rajani Ratilal Sarnot

.... Petitioner

- Versus -

1. State of Maharashtra

2. The Collector, Pune,
Collector Office Compound,
Pune-411 001.

3. The Commandant,
State Reserve Police Force,
Group No.V, having his
office at Daund,
District Pune.

4. The Commandant,
State Reserve Police Force,
Group No.VII, having his
office at Daund,
District Pune.

5. The Special Land Acquisition
Officer No.3, Pune, having his
office at New Administrative
Building, Second Floor,
“D” Wing, Pune-411 001.

.... Respondents

WITH

WRIT PETITION NO.6363 OF 2012

1. Nikhil Uday Kajale,
Age 37 years, Occupation: Service,
residing at Room No.103, Building
No.84, Techno Residency, 2nd Lane,
Hindu Colony, Dadar,
Mumbai-400 014.
2. Ajit Ganesh Kajale,
Age about 59 years,
through his Power of Attorney,
Ravindra Ramchandra Abhyankar,
R/at Mumbai, 4/7, Ambekar Nagar,
Chunabhatti, Mumbai.
3. Sou. Sucheta Ravindra Abhyankar,
Age 54 years, Occ: Household Work,
R/at as No.2 above.

.... Petitioners

- Versus -

1. State of Maharashtra
2. The Collector, Pune,
Collector Office Compound,
Pune-411 001.
3. The Commandant,
State Reserve Police Force,
Group No.V, having his
office at Daund,
District Pune.
4. The Commandant,
State Reserve Police Force,
Group No.VII, having his
office at Daund,
District Pune.

5. The Special Land Acquisition
Officer No.3, Pune, having his
office at New Administrative
Building, Second Floor,
“D” Wing, Pune-411 001.

.... Respondents

AND

WRIT PETITION NO.6006 OF 2012

Dr. Pramod Mitharam Bhangale,
Age Adult, Occ: Medical Practitioner,
residing at Post and Taluka Daund,
District Pune.

.... Petitioner

- Versus -

1. State of Maharashtra
2. The Collector, Pune,
Collector Office Compound,
Pune-411 001.
3. The Commandant,
State Reserve Police Force,
Group No.V, having his
office at Daund,
District Pune.
4. The Commandant,
State Reserve Police Force,
Group No.VII, having his
office at Daund,
District Pune.

5. The Special Land Acquisition
Officer No.3, Pune, having his
office at New Administrative
Building, Second Floor,
“D” Wing, Pune-411 001.

.... Respondents

Mr. Praveen K. Hushing for the Petitioner/s in all
Petitions.

Mr. V.S. Gokhale, Assistant Government Pleader,
for the Respondents.

CORAM: A.S. OKA &
REVATI MOHITE DERE, JJ.

DATED: AUGUST 03, 2015

ORAL JUDGMENT [Per A.S. Oka, J.]:

1. On the earlier dates, the parties were put to notice
that the petitions shall be disposed of finally at the stage of
admission.

2. These three petitions relate to three different lands,
more particularly described in paragraph 4 of the writ petitions.
The challenge in these petitions under Article 226 of the

Constitution of India is based on the fact that the requisition of the lands subject-matter of these petitions has been continued for an unreasonably long time. Brief reference to the facts of the case will be necessary.

3. The lands subject-matter of these petitions were requisitioned under the Defence of India Rules in the year 1941 and the requisition continued under the provisions of the Requisitioned Land (Continuance of Power) Act, 1947. In respect of the lands subject-matter of these petitions, an order was made by the District Collector in exercise of powers under Section 7 of the Bombay Land Requisition Act, 1948 (for short, “the Requisition Act”) by which the requisition of the said lands was continued in the purported exercise of the powers under Section 7 of the Requisition Act. The order records that possession of the lands, earlier requisitioned under the Defence of India Rules by the Defence Department of the Government of India was handed over to the then Government of Bombay.

4. On 16-9-1980, the Collector of Pune District passed an order in exercise of powers under Section 9(1) of the Requisition Act, releasing the lands requisitioned under the order dated 6-4-1951 from the requisition. We may note here that under the order dated 6-4-1951, the requisition was continued for the use of the State Reserve Police Force. The Collector of Pune passed an order on 29-8-1981 purporting to withdraw the earlier order dated 16-9-1980 of the release of the said lands from requisition.

5. It appears that on 9-4-2010, a notification under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (for short, "the Land Acquisition Act") was issued notifying the lands subject-matter of these petitions for acquisition for public purpose for use of the State Reserve Police Force.

6. The contention raised in these petitions is that the requisition of the lands subject-matter of these petitions has been continued for an unreasonably long time. It is contended

that the order dated 29-8-1981 passed by the Collector cancelling the order of de-requisition is a nullity. The petitioners are relying upon the provisions of Section 9 of the Land Acquisition Act and urged that in any case the requisition will lapse after the expiry of a period of 24 years from the date on which possession of the requisitioned lands was taken over by the State Government.

7. The substantive challenge in these petitions under Article 226 of the Constitution of India is to the order of cancellation dated 29-8-1981 as well as to the notification under Section 4(1) of the Land Acquisition Act dated 9-4-2010. A prayer is made for directing the respondents to place the petitioners in possession of the requisitioned lands. Affidavits in reply have been filed in Writ Petition No.6240 of 2012. There is an affidavit of Shri Nehru Dashrath Bandgar, Police Inspector, State Reserve Police Force, Group No.5, Daund, District Pune. It is contended in the said affidavit that the lands are required for the purpose of the State Reserve Police Force and it is contended

that the lands will be acquired after following the due process of law. There is another affidavit filed by Shri Mohan Annaso Devkar, Police Inspector, State Reserve Police Force, Group No.5, Daund, District Pune. It is contended that the lands are required for the *bona fide* use of the State Reserve Police Force. It is contended that the respondents require the said lands for the functioning of Anti-Naxal Training and other activities. Lastly, there is an affidavit filed by Shri Udaysinh D. Bhosale, Special Land Officer No.3 of the Collector's office, Pune. In paragraph 5, it is pointed out that the land acquisition proceedings initiated under the Land Acquisition Act on the basis of the notification dated 9-7-2010 issued under Section 4(1) of the Land Acquisition Act has lapsed. In paragraph 7, he has stated that though it is intended to start acquisition proceedings of the said lands under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the New Land Acquisition Act"), for various reasons, the proceedings have not been initiated. It is stated that the said respondent is

willing to complete the proceedings of the land acquisition under the New Land Acquisition Act after all the procedure, rules and requirements of law are complied with.

8. The learned counsel appearing for the petitioners relied upon various decisions of the Apex Court including the decisions in **H.D. Vora v. State of Maharashtra and others**, reported in (1984) 2 SCC 337 and **Grahak Sanstha Manch and others v. State of Maharashtra**, reported in AIR 1994 SC 2319. He urged that apart from the statutory limitation imposed by Section 9 of the Requisition Act, the order of Requisition cannot be continued for such an unreasonably long time of more than 60 years. He pointed out that even the orders of requisition dated 6th April, 1951 record that the then Government of Bombay was placed in possession of the said lands in the year 1950 and prior to that, from 1941 onwards, the said lands were in possession of the Defence Department of the Government of India. Thus, he pointed out that the requisition of the said lands has been continued for more than 60 years. He pointed out that

even the acquisition proceedings initiated under the Land Acquisition Act having admittedly lapsed and there are no proceedings initiated under the New Land Acquisition Act.

9. The learned AGP appearing for the respondents opposed the petitions and urged that the said lands are needed for public purpose. He pointed out that the said lands are needed for the use of the State Reserve Police Force and also imparting training in Anti-Naxal activities. He would, therefore, urge that no interference is called for.

10. We have given careful consideration to the submissions. The order of requisition dated 6-4-1951 passed by the Collector of Pune in exercise of powers under Section 7 of the Requisition Act itself records that the lands subject-matter of the said order were already requisitioned by the Defence Department of Government of India under the Defence of India Rules and thereafter, the requisition was continued under the Requisitioned Land (Continuance of Power) Act, 1947. The said

order records that the possession of the lands subject-matter of requisition under the Defence of India Rules was handed over to the then Government of Bombay in the year 1950. As pointed out earlier, the order of de-requisition was passed by the Collector on 16-9-1980, which was subsequently revoked on 29-8-1981. Thereafter, the State Government published a notification dated 9-7-2010 under sub-section (1) of Section 4 of the Land Acquisition Act. The very fact that the said notification was issued shows that the State Government never intended to continue the requisition of the said lands and was desirous of acquiring the said lands. Now, admittedly, the acquisition based on the notification dated 9-7-2010 has lapsed.

11. At this stage, it will be necessary to consider the law laid down by the Apex Court, firstly, in the case of **H.D. Vora** (supra). It was held by the Apex Court while dealing with the provisions of the Requisition Act, that under the guise of continuing the requisition for an indefinite period of time, in substance, the land subject-matter of the requisition cannot be

acquired. The Apex Court held that the requisition cannot be continued for an unreasonably long time. It appears that a reference was made to the Larger Bench of the Apex Court as regards the view taken in the case of H.D. Vora. The Constitution Bench consisting of five Hon'ble Judges dealt with the issue in the case of **Grahak Sanstha Manch** (supra), the majority Judgment was delivered by S.P. Bharucha, J. (as he then was). The Apex Court observed that the decision in the case of H.D. Vora does not require reconsideration. In paragraph 16 of the majority Judgment, the Apex Court held thus:

“16. For the aforesaid reasons, we hold that the decision in H.D. Vora's case (AIR 1984 SC 866) does not require reconsideration. We, however, do not approve the observations therein that requisition orders under the said Act cannot be made for a permanent purpose. We make it clear that the said decision does not lay down, as has been argued, a period of 30 years as the outer limit for which a requisition order may continue. The period of 30 years was mentioned in the decision only in the context of the date of the requisition order there concerned. An order of requisition can continue for a reasonable period of time and it was held, as we hold, that the continuance of an order of requisition for as long as 30 years was unreasonable.”

(Underline supplied)

In paragraph 15, the Apex Court held that a landlord cannot, in effect and substance, be deprived of his right and title to the property without being paid due compensation, and this is the effect of prolonged requisition. In the same paragraph, the Apex Court held that requisition can be continued only for a reasonable period. It was clarified that what period should be reasonable would depend upon the facts and circumstances of each case.

12. As quoted earlier, in paragraph 16, the Apex Court categorically held that an order of requisition can continue only for a reasonable period of time. In the present case, the requisition of the said land under the Defence Rules was made in the year 1941. The requisition for the purpose of the State Government (then Government of Bombay) was made under the order dated 6-4-1951 by taking over the said lands from the Defence Department. In the facts and circumstances of the case, it is obvious that the requisition has been continued for an

inordinately and unreasonably long time of more than 60 years. Moreover, the State Government intended to acquire the said lands by discontinuing the requisition and that is how the notification dated 9-4-2010 under sub-section (1) of Section 4 of the Land Acquisition Act was issued.

13. Therefore, the petitions must succeed and directions will have to be issued to the respondents to de-requisition the lands subject-matter of these petitions and to place the petitioners in vacant possession thereof. We must note here that the acquisition on the basis of the impugned notification dated 9-4-2010 has already lapsed. Therefore, it is not necessary to deal with the challenge to the said notification. Though it is stated in the affidavits filed on record that the respondents desire to acquire the land under the New Land Acquisition Act, the proceedings for acquisition have not been initiated. As and when proceedings are actually initiated, it will be open for the petitioners to challenge the proceedings in accordance with law.

14. The affidavit in reply filed by Shri Mohan Annaso Devkar, Police Inspector, State Reserve Police Force, Group No.5, Daund, District Pune records that the said lands are required for holding Anti-Naxal Training. In view of this statement, we propose to grant a longer time to the State Government to place the petitioners in possession. We propose to grant time to the respondents till 31-1-2016 to deliver possession of the lands subject-matter of requisition to the petitioners.

15. Hence, we dispose of the above petitions by passing the following order:

ORDER

(i) The continuation of the requisition of the lands subject-matter of these petitions under the order dated 6-4-1951 stands vitiated on the ground that the requisition cannot be continued for an unreasonably long time;

(ii) We direct the respondents to place the petitioners in vacant possession of the lands subject-matter of these petitions on or before 31-1-2016;

(iii) Notwithstanding the Judgment and Order, it will be open for the respondents to initiate acquisition proceedings under the New Land Acquisition Act in relation to the lands subject-matter of these petitions. If such proceedings are initiated, it will be open for the petitioners to challenge the same in accordance with law on all permissible ground. All contentions of the parties in that behalf are kept open;

(iv) It will be open for the petitioners to apply to the Competent Authority under the Requisition Act for grant of compensation on account of requisition of the lands in question. If such applications are made, the concerned Competent Authority shall decide the same within a period of four months of the date of receipt of such applications;

suresh

2930-WPG-6240-6363-6006.2012

(v) Rule is made absolute in above terms with no order
as to costs.

(REVATI MOHITE DERE, J.)

(A.S. OKA, J.)