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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.264 OF 2009

Dr.Mohammad Ali Nawabsaheb Wadwan
(since deceased through LRs.) ...Petitioners
vs.
The State of Maharashtra
and others ...Respondents

Dr.Ramdas P. Sabban for the Petitioners
Mr.V.S.Gokhale, AGP for the respondent Nos.1 to 4
Mr.Nitin P. Deshpande for respondent Nos.5 and 6
Mr.Vijay Killedar a/w Siddharth Gadhvi for
respondent No.7.

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

DATE ON WHICH JUDGMENT IS RESERVED: AUGUST 13, 2015

DATE ON WHICH JUDGMENT IS PRONOUNCED:OCTOBER 23,2015

JUDGMENT : (PER A.S.OKA,J.)

1 By this Writ Petition under Article 226 of the Constitution of India, the petitioners are seeking a writ of mandamus directing the respondents to acquire the land of the petitioners more particularly described in paragraph 2 of the petition. The prayer is either for issuing the aforesaid direction or for the restoration of the vacant and peaceful possession of the land described in paragraph 2 of the petition (for short 'the said land') to the petitioners within the time fixed by this Court. The second substantive prayer is for directing the respondents to decide the representations dated 22nd January 2008 and 13th February 2008. The third prayer is for setting aside the notice dated 18th October 2007 issued by

the State Government under sub section (1) of section 41 of the Maharashtra Housing and Area Development Act, 1976 (for short 'the MHADA Act'). By the said notice published in official Gazette, the owners of the said land were called upon to show cause within a period of 30 days from the date of the publication of the said notice in the official Gazette as to why the said land should not be acquired for the purpose of construction of a water tank. The first to fourth respondents are the State of Maharashtra and its officers. The sixth respondent is the Chief Executive Officer of the Maharashtra Housing and Area Development Authority (For short "MHADA") established under section 3 of the MHADA Act. The fifth respondent is the Chief Officer of the Pune Regional Board constituted under the section 18 of the MHADA Act.

2 The case made out in the petition is that by the order dated 28th May 1986 (Exhibit G) passed by the District Collector in exercise of powers under 5 (1) of the Bombay Requisition Act, 1948 (for short 'the Requisition Act'), the requisition of the said land was made for construction of a water reservoir at Solapur which is a part of twin Solapur Project No.1. According to the case of the petitioners, the said land could have continued under the requisition for a maximum period of 17 years as per the provisions of the section 9 of the Land Requisition Act. As the land was not restored on expiry of the period of 17 years which ended on 28th May 2003, the petitioners requested the respondents to restore the

possession of the said land. The case made out in the petition is that as no order was passed on the application/representation made by the petitioners, earlier Writ Petition No.7487 of 2003 was filed in this Court. By order dated 15th April 2004, a Division Bench disposed of the said Writ Petition by directing the respondents to decide the representation within a period of three months from the date of order. On the basis of the said order, the Principal Secretary of the Housing Department called a meeting on 11th March 2005 when the Advocate for the petitioners was heard. The Secretary directed that an action of acquisition of the said land under section 41 of the MHADA Act be shall commence and shall be completed within a period of three months.

3 The petitioners are relying upon the notification dated 24th November 2005 issued by the State Government. The said notification records that by earlier notification dated 29th September 1981, the MHADA was appointed as the Special Planning Authority for the area of 293 Hectares known as SPA-I. The said notification records that MHADA was appointed as the Special Planning Authority also for the housing scheme for Bidi workers for the area known as SPA-II. It records that both the areas were outside the limits of the Solapur Municipal Corporation. Subsequently, the limits of Solapur Municipal Corporation were extended and both the areas were included in the Municipal Corporation limits. By the said

notification, in exercise of powers conferred by section 160 of the Maharashtra Regional and Town Planning Act, 1966 the State Government declared that the MHADA ceased to be the Special Planning Authority for both the said areas and from 24th November 2005, the Solapur Municipal Corporation shall be the Planning Authority for both the areas.

4 In view of the aforesaid notification, the petitioners made a representation dated 22nd January 2008 and 13th February 2008 through their Advocate requesting the respondents either to acquire the said land under the provisions of the Land Acquisition Act, 1894 (for short 'the Land Acquisition Act') or to restore the vacant possession of the said land to the petitioners. The petitioners are relying upon the order dated 10th July 2000 passed in the Writ Petition No.3215 of 2000 which according to the case of the petitioners was passed in a similar matter. The contention raised in the petition is that after 24th November 2005, the MHADA cannot discharge functions as the Special Planning Authority in respect of the said land and, therefore, the notification dated 18th October 2007 issued under sub-section (1) of section 41 of the MHADA Act is illegal and the same is liable to be set aside.

5 The learned counsel for the petitioners submitted that the requisition of the said land under order dated 28th May 1986 has continued beyond the statutory period and for an unreasonably long

time. He pointed out that as the MHADA has ceased to be the Special Planning Authority for the concerned area with effect from 24th November 2005, the notification dated 18th October 2007 issued by the State Government under sub-section (1) of section 41 of the MHADA Act is rendered illegal. He relied upon various decisions of the Apex Court and this Court including the decision in the case of H.D.Vora Vs. State of Maharashtra and others¹ and Grahak Sanstha Manch and others vs. State of Maharashtra². He urged that either the said land should be acquired or the same should be restored to the Petitioners.

6 The learned counsel appearing for the fifth and sixth respondents relied upon the affidavit in reply of Shri Milind Mohan Atakale, the Deputy Engineer, Solapur Sub Division, Pune Housing and Area Development Board, Solapur. The submission is that though with effect from 24th November 2005, the MHADA may not be the Special Planning Authority for any area forming part of the jurisdiction of the Solapur Municipal Corporation, it is not precluded from exercising the powers under section 41 of the MHADA Act to acquire lands. He urged that notice dated 18th October 2007 cannot be set aside. He pointed out that the water tank constructed by the MHADA on the said land has been handed over to the Solapur Municipal Corporation from 1st January 1993. He would therefore urge that no fault can be found

1 (1984) 2 SCC 337

2 (1994) 4 SCC 192

with the proceedings under sub-section (1) of section 41 of the MHADA Act. The learned AGP supported the submissions made by the learned counsel for the fifth and sixth respondents. The learned counsel for the Solapur Municipal Corporation pointed out that no order can be passed affecting the water tank/reservoir which is in existence for last several years on the said land.

7 We have given careful considerations to the submissions. Firstly, we deal with the issue of the requisition of the said land under the Requisition Act by the order dated 28th May 1986. It will be necessary to make a reference to section 9 of the Requisition Act. Clause (a) of sub-section (1A) of section 9 provides that any land requisitioned or continued to be subject of requisition under the Requisition Act before the commencement of the Bombay Land Requisition (Amendment) Act, 1973 shall be released from requisition by the State Government on or before the expiry of period of 19 years from the date of commencement of the Amendment Act. Clause (b) of sub-section 1A of section 9 provides that any land requisitioned under the Requisition Act after the commencement of the Bombay Land Requisition (Amendment), Act, 1973 shall be released from requisition on or before the expiry of period of 19 years from the date on which the possession of the land was surrendered or taken over by the State Government.

8 Admittedly, the process of the compulsory

acquisition of the said land is not yet completed and, therefore, from 28th May 1986 till today i.e for a period of more than 29 years and 4 months, the said land continues to be under requisition. It ought to have been released from requisition on or before 28th May 2005 in terms of clause (b) of subsection 1A of section 9. On this aspect, it will be necessary to make a reference to the decision of the Constitution Bench of the Apex Court in the case of Grahak Sanstha Manch and others. We must note here that in the case of Grahak Sanstha Manch and others, the Apex Court considered its earlier decision in the case of H.D.Vora Vs. State of Maharashtra and others. In paragraph No.6 of the decision in the case of H.D.Vora, the Apex Court held thus:

“But we find that there is also another ground of challenge urged on behalf of Respondent 3 and that is a very formidable ground to which there is no answer. **The argument urged under this ground of challenge was that an order of requisition is by its very nature temporary in character and it cannot endure for an indefinite period of time and the order of requisition in the present case therefore ceased to be valid and effective after the expiration of a reasonable period of time and that it could not, under any circumstances, continue for a period of about 30 years and hence it was liable to be quashed and set aside or in any event the State Government was bound to revoke the same and to derequisition the flat.** This contention has, in our opinion, great force and must be sustained. **There is a basic and fundamental distinction recognized by law between requisition and acquisition. The Constitution itself in Entry 42 of List III of the Seventh Schedule makes a distinction**

between acquisition and requisitioning of property. The original Article 31 clause (2) of the Constitution also recognized this distinction between compulsory acquisition and requisitioning of property. The two concepts, one of requisition and the other of acquisition are totally distinct and independent. Acquisition means the acquiring of the entire title of the expropriated owner whatever the nature and extent of that title may be. The entire bundle of rights which was vested in the original holder passes on acquisition to the acquirer leaving nothing to the former. Vide: Observations of Mukherjee, J., in *Chiranjit Lal case* [*Chiranjit Lal v. Union of India*, AIR 1951 SC 41 : 1950 SCR 869] . **The concept of acquisition has an air of permanence and finality in that there is transference of the title of the original holder to the acquiring authority. But the concept of requisition involves merely taking of “domain or control over property without acquiring rights of ownership” and must by its very nature be of temporary duration. If requisitioning of property could legitimately continue for an indefinite period of time, the distinction between requisition and acquisition would tend to become blurred, because in that event for all practical purposes the right to possession and enjoyment of the property which constitutes a major constituent element of the right of ownership would be vested indefinitely without any limitation of time in the requisitioning authority and it would be possible for the authority to substantially take over the property without acquiring it and paying full market value as compensation under the Land Acquisition Act, 1894. We do not think that the Government can under the guise of requisition continued for an indefinite period of time, in substance acquire the property, because that would be a fraud on the power conferred on the Government. If the Government wants to take over the property for an indefinite period of time, the Government must acquire the**

property but it cannot use the power of requisition for achieving that object. The power of requisition is exercisable by the Government only for a public purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed, would be a fraud upon the statute, for the Government would be requisitioning the premises when really speaking they want the premises for acquisition, the object of taking the premises being not transitory but permanent in character. Where the purpose for which the premises are required is of such a character that from the very inception it can never be served by requisitioning the premises but can be achieved only by acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the Government may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely. **Here in the present case the order of requisition was made as far back as April 9, 1951 and even if it was made for housing a homeless person and the appellant at that time fell within the category of homeless person, it cannot be allowed to continue for such an inordinately long period as thirty years. We must therefore hold that the order of requisition even if it was valid when made, ceased to be valid and effective after the expiration of a reasonable period of time. It is not necessary for us to decide what period of time may be regarded as reasonable for the continuance of an order of requisition in a given case, because ultimately the answer to this question must depend on the facts and circumstances of each case** but there can be no doubt that whatever be the public purpose for which an order of requisition is made, the period of time for which the order of requisition

may be continued cannot be an unreasonably long period such as thirty years. The High Court was, therefore, in any view of the matter, right in holding that in the circumstances the order of requisition could not survive any longer and the State Government was bound to revoke the order of requisition and derequisition the flat and to take steps to evict the appellant from the flat and to hand over vacant possession of it to Respondent 3."

(emphasis added)

9 In paragraphs 16 and 17 of the decision in the case of Grahak Sanstha Manch, the Apex Court held thus :

"16. We find ourselves in agreement with the view taken in the cases of *Collector of Akola*[(1968) 1 SCR 401 : AIR 1968 SC 244] and *Jiwani Kumar Paraki*[*Jiwani Kumar Paraki v. First Land Acquisition Collector*, (1984) 4 SCC 612] that the purpose of a requisition order may be permanent. But that is not to say that an order of requisitioning can be continued indefinitely or for a period of time longer than that which is, in the facts and circumstances of the particular case, reasonable. We note and approve in this regard, as did this Court in *Jiwani Kumar Paraki case*[*Jiwani Kumar Paraki v. First Land Acquisition Collector*, (1984) 4 SCC 612] , the observations of the Nagpur High Court in the case of *Mangilal Karwa v. State of M.P.* [ILR 1955 Nag 34 : AIR 1955 Nag 153] which have been reproduced above. That the concept of requisitioning is temporary is also indicated by the Law Commission in its Tenth Report and, as pointed out earlier, by the terms of the said Act itself, as it originally stood and as amended from time to time. **There is no contradiction in concluding that while a requisition order can be issued for a permanent public purpose, it cannot be continued indefinitely.** Requisitioning might have to be resorted to for a

permanent public purpose, to give an example, to tide over the period of time required for making permanent premises available for it. **The concepts of acquisition and requisition are altogether different as are the consequences that flow therefrom. A landlord cannot, in effect and substance, be deprived of his rights and title to property without being paid due compensation, and this is the effect of prolonged requisitioning. Requisitioning may be continued only for a reasonable period; what that period should be would depend upon the facts and circumstances of each case and it would ordinarily, be for the Government to decide.**

17. For the aforesaid reasons, we hold that the decision in *H.D. Vora case* [(1984) 2 SCC 337] 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.**

(emphasis added)

10 Thus, the law laid down by the Apex Court is that the requisition can be continued only for a reasonable period.

11 In the present case, the State was aware of this position and, therefore, by a notice dated 18th October 2007, an attempt was made to initiate acquisition proceedings under the section 41 of the

MHADA Act for compulsory acquisition. However, the acquisition proceedings were not taken to its logical conclusion. Thus, the order of acquisition has continued for a period of 29 years and 4 months. Looking at the facts of the case, from any angle, the said period of 29 years and 4 months will have to be held as unreasonable especially in view of the fact that an attempt was made to initiate acquisition proceedings in the year 2007. Therefore, the continuation of requisition under the Requisition Act stands vitiated.

12 The second issue is regarding the legality and validity of the action initiated under sub-section (1) of section 41 of the MHADA Act. It is not in dispute that the said land was a part of the land notified on 29th September 1981 by the State Government by which the MHADA was constituted as the Special Planning Authority. By the notification dated 24th February 2005, the MHADA ceased to be the Special Planning Authority for the said area from the date of the said notification. It is not in dispute that the MHADA has constructed a water reservoir on the said land and that the water reservoir has been handed over to the Solapur Municipal Corporation (7th respondent). The affidavit of Shri Milind filed on behalf of the MHADA discloses that from 1st January 1993, the water reservoir is being maintained by the Solapur Municipal Corporation.

13 Now the question is whether the acquisition

initiated under sub-section (1) of section 41 of the MHADA Act can continue. Under sub-section (1) of section 41, on an application made by the MHADA, if it appears to the State Government that in order to enable the MHADA to discharge any of its functions or to exercise any of its power or to carry out any of its proposals, plans or projects, it is necessary that any land should be acquired, the State Government may acquire such land by publishing a notification. Sub-section (2) provides that acquisition of any land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose. Sub-section (1) provides that before publishing a notification contemplated by sub-section (1) of section 41, the owner or person interested is required to be served with the show cause notice calling upon him to show cause as to why the land should not be acquired. After considering the reply to the show cause notice, the State Government is required to pass such order as it deems fit. The vesting is complete only when a notification contemplated by sub-section (1) of section 41 is published in the Official Gazette.

14 We have carefully perused the notice dated 18th October 2007. It records that there is a proposal to acquire the said land and by the said notice, objections to the proposal were called for. Thus, it is a notice of the proposed acquisition calling upon the owners to submit objections within thirty days. From the affidavit in reply of the fifth and sixth respondents, we find that it is not even the case

made out that a notification as contemplated by sub-section (1) of section 41 was published in Official Gazette after the State Government passed an order after taking into consideration the objections received. Thus, almost for a period of 8 years, no further steps have been taken on the basis of the said notification dated 18th October 2007. Though the affidavit of the fifth and sixth respondents is filed on 25th February 2009, even thereafter, no further steps have been taken. The only interim order passed by this Court on 16th April 2009 is for restraining the respondents from developing the said land, from putting up any structure thereon and from creating any third party rights in the said land. However, a liberty was granted to the respondents to acquire the said land if needed for the public purpose under the Land Acquisition Act, 1894. As of today, since the MHADA has ceased to be the Special Planning Authority for the area in which the said land is situated and as the water tank/reservoir constructed by the MHADA on the said land has been handed over to the Solapur Municipal Corporation, it cannot be said that the MHADA requires the said land for discharge of any of its functions or to exercise any of its powers or to carry out any of its proposals, plans or projects. The MHADA ceased to be the Special Planning Authority for the area concerned on the basis of the notification dated 24th November 2005. Before issuing the notice dated 18th October 2007, this aspect ought to have been considered. Perhaps, the said notice was issued on the basis of the direction

issued by the Secretary of the Housing Department in the meeting held on 11th March 2005. Hence, the acquisition of the said land cannot be made now on the basis of the notice dated 18th October 2007.

15 As we have held that the requisition of the said land under the Requisition Act stands vitiated, it follows that the possession of the said land will have to be restored to the petitioners. However, from the prayer clause (a) of this Petition, we find that the petitioners have no objection if the said land is acquired. Moreover, we cannot ignore that there is a water tank/reservoir constructed on the said land. Therefore, a reasonable time will have to be granted to the Solapur Municipal Corporation and the State Government to initiate and complete the acquisition proceedings in respect of the said land. Considering the fact that the water tank/reservoir is in existence on the said land, we propose to grant time of two years to the Solapur Municipal Corporation. Hence, Writ petition must succeed.

16 Hence, we pass the following order:

(I) We declare that the continuation of the requisition of the said land bearing Survey No.305/3A admeasuring 896 sq meters situated at Solapur under the order dated 28th May 1986 stands vitiated. Accordingly, the order dated 28th May 1986 (Exhibit G to the petition) stands set aside;

- (II) We restrain the respondent Nos.1 to 6 from initiating any further proceedings on the basis of the notice dated 18th October 2007 (Exhibit D to the petition);
- (III) However, we make it clear that this Judgment and order will not preclude the Solapur Municipal Corporation from initiating proceedings for the acquisition of the aforesaid land under the relevant law relating to the compulsory acquisition;
- (IV) To enable the Municipal Corporation to initiate the proceedings for acquisition of the said land by making necessary application to the District Collector and to complete the same, we grant time of two years from today to the Solapur Municipal Corporation to restore the possession of the said land to the petitioners. If the acquisition is completed within the stipulated period of two years, the petitioners will not be entitled to the restoration of the possession of the said land ;
- (V) If such application for initiating the acquisition proceedings is made by the Solapur Municipal Corporation to the collector within a period of three months from today, the State Government shall ensure that the proceedings are initiated immediately and concluded within a period of two years from today provided the Solapur Municipal Corporation deposits the requisite amounts as and when called upon by the Government;

- (VI) If within a period of two years from today, acquisition proceedings are not completed in accordance with the law, the Solapur Municipal Corporation shall forthwith put the petitioners in possession of the said land after restoring it to its original condition;
- (VII) Rule is made absolute on above terms. No order as to costs.

(REVATI MOHITE DERE, J.)

(A.S.OKA, J.)