

Mahanagar Telephone Nigam Ltd. }	Petitioner
versus	
State of Maharashtra and Ors. }	Respondents

Mr. Akhilesh Dubey with Mr. Vagish Mishra i/b. M/s. Law Counsoller for Respondent No. 7.

DATED :- JANUARY 28, 2016

1) The only contention raised before us by Ms. Shah appearing for the Petitioner is that the Notification dated 28th February 2006, issued by the State, is bad in law. According to her, a large piece and parcel of land was notified for acquisition under the Land Acquisition Act, 1894. The acquisition proceedings were initiated vide Notification under section 4 of the Land Acquisition Act, 1894, which came to be published in the

Maharashtra Government Gazette on 15th October 1981. A declaration under section 6 was issued on 17th August 1983 and that also came to be published in the Maharashtra Government Gazette (Part I) dated 1st September 1983. This is after compliance with section 5-A of the said Act.

2) Thereafter, further steps were taken and eventually, an award was published on 23rd September 1986 acquiring 1091.95 meters of land situate at Himalaya Baug, Mahim, Mumbai for a public purpose, namely for the Mahanagar Telephone Nigam Limited.

3) Thus, an Award determining the sum to be paid to the owners/persons interested in the land was passed. That sum was determined as Rs.24,21,818/-. In the light of this Award, the Petitioner/beneficiary deposited a sum of Rs.30 lacs with the State Government and the State Government acknowledged receipt thereof. The State and the land acquisition officer appropriated and adjusted the Award amount from this sum and returned the balance of Rs.5,78,182/- to the Petitioner. However, the award came to be challenged by Respondent No. 7 by filing of Writ Petition No. 2702 of 1986 in this Court. Ms. Shah does not dispute that the Petitioner was impleaded as a party respondent

to this Petition. That Petition was dismissed by a Division Bench judgment on 19th June 2001.

4) The grievance of Ms. Shah is that Respondent Nos. 5 and 6, without joining the Petitioner as Defendant, brought a Suit in the High Court being Suit (L) No. 1505 of 2002 and they were successful in convincing a learned Single Judge of this Court to grant an interim stay of taking possession of the property.

5) In the light of this and when the Petitioner was unaware of the order of stay passed on 3rd May 2002, the acquisition proceedings being for the benefit of the Petitioner, withdrawal from the same under section 48(1) of the Act was impermissible. She submits that the law does not enable the State to withdraw from acquisition after the proceedings have been finalised and only possession was required to be taken. According to her, the entire sum having been appropriated and adjusted, it was not open for the State to withdraw from acquisition.

6) It is not possible for us to accept any of these contentions. The Petitioner recites in para 10 of the Petition that from August 2006 to October 2009 the State was requested to hand over possession of the land in view of the dismissal of the

owner's Writ Petition by the Court. The Petitioner states that it was unaware of any Suit being filed in this Court and of the interim order of stay passed therein. The Petitioner eventually obtained the record in relation to the Suit from the office of the Government Pleader.

7) The Petitioner, during this entire period, feigns ignorance about the notification dated 28th April 2006 issued by Respondent No. 1 for cancellation of the acquisition proceedings under section 48(1) of the Land Acquisition Act, 1894.

8) It is, throughout, undisputed before us that the possession of the land was not taken by the State in its entirety.

9) Section 48 of the Land Acquisition Act, 1894 is clear. That enables the State to withdraw from acquisition of any land of which possession has not been taken.

10) The legal position as emerging from the record is that the owner has not claimed any compensation under section 48(2) of the Land Acquisition Act, 1894.

11) The Petitioner's Counsel would urge that for the Petitioner there is no remedy, save and except the present Writ

Petition. However, the whole case is founded on the fact that section 48(1) of the Land Acquisition Act, 1894 cannot be resorted to by the State and not that the withdrawal is vitiated for non compliance with the principles of natural justice.

11) The other argument is that the property vests in the State and there was no warrant, therefore, then, to take the steps of issuance of the subject Notification.

12) Both arguments overlook section 16 of the Land Acquisition Act, 1894. Section 16 states that when the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. This vesting has admittedly not taken place. Further, by section 15A, which is inserted by Act 68 of 1984, the appropriate Government may at any time before the award is made by the Collector under section 11 call for any record of any proceedings for the purpose of satisfying itself as to the legality or propriety of any finding or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit. It is this power which could not have been exercised possibly after the award was made. However, when the

power to take possession has not been exercised, and possession admittedly not taken, then no vesting has taken place. So long as no vesting has taken place, the State could have resorted to section 48 of the Land Acquisition Act, 1894. The Petitioner had no right, title and interest in the property until it stood vested in the State and was handed over to the Petitioner for its stated public purpose. That event has admittedly not taken place. In the subject or impugned notification, cogent reasons have been assigned as to how in view of pendency of legal proceedings possession of the land could not be taken by the State. In these circumstances, we do not see any substance in the contentions raised before us. The Petition has no merit and it is dismissed.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)