

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1339 OF 2015

Mohan Babarao Daware Vs. Maharashtra Airport Development Co. Nagpur & Ors.

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri S. W. Sambre Adv for petitioner.
Shri R. M. Bhangde, Adv for respondent no. 1.
Smt B. H. Dangre GP for respondent nos. 2, 3, 4 &
5.

**CORAM: SMT. VASANTI A. NAIK &
A. S. CHANDURKAR JJ.**

DATED: 29th FEBRUARY, 2016.

Heard. By this writ petition the petitioner seeks a declaration that the land of the petitioner admeasuring 0.33 R. of Mouza Shivangaon, Tahsil and District Nagpur should not be acquired without following the due procedure of law and that the same may be directed to be acquired after following the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the Act of 2013).

It is the case of the petitioner that he was the owner of 0.93 R land from Kh. No. 164/02. On 02.05.2008 the Special Land Acquisition Officer passed his award under the provisions of the Land Acquisition Act, 1894 (for short, the Act of 1894). The petitioner thereafter filed proceedings under Section 18 of the Act of 1894 seeking enhancement of compensation. Thereafter the petitioner had filed Writ Petition No. 2494 of 2013 in this Court challenging the acquisition proceedings that had been initiated by the respondents. According to the petitioners after the said writ petition was dismissed, a fresh Notification dated 02.05.2014 came to be issued by the State Government proposing to acquire 0.33 R of land from aforesaid survey number. As no further steps were being taken pursuant to aforesaid Notification, the present writ petition is filed seeking aforesaid relief.

Shri S. W. Sambre, the learned counsel for the petitioner submitted that after the earlier writ petition was decided, without issuing any notice to the petitioner the State Government had its own issued the Notification dated 02.05.2014 to acquire 0.33 R land. It is submitted that the said land was sought to be acquired without following the due process of law and therefore the petitioner was entitled to be compensated in accordance with law

under the provisions of the Act of 2013.

It was submitted that the petitioner never opposed the acquisition of aforesaid land and his prayer was that these proceedings should be conducted as per the provisions of the Act of 2013. It is, therefore, submitted that in terms of Notification dated 02.05.2014, the aforesaid reliefs deserve to be granted to the petitioner.

Shri R. M. Bhangde, the learned counsel appearing for respondent no.1 on the other hand submitted that, a similar relief had been sought by the petitioner in the earlier writ petition which had been dismissed on 19.09.2013. It was held by this Court that the petitioner was not entitled to challenge the acquisition proceedings . He submitted that the Special Leave Petition challenging the aforesaid challenge was dismissed by the Hon'ble Supreme Court on 17.11.2014 and hence the order passed in Writ Petition No. 2494 of 2013 had attained finality. It is further submitted that the notification dated 02.05.2014 cannot have any legal sanctity in view of the fact that the lands in question already vested in the State Government by virtue of the provisions of the Urban Land Ceiling Act, 1976. It was further submitted that the possession was also taken in the year 2006.

Smt. B. H. Dangre, the learned Government Pleader for respondent nos. 2 to 5 on instructions submitted that the fact that the earlier writ petition which was filed by the petitioner was dismissed was not brought to the notice of the State Government before issuance of the notification dated 02.05.2014. She fairly stated that in the light of the judgment dated 19.09.2013 in Writ Petition No. 2494 of 2013 it would not be legally permissible to again acquire 0.33 R land which already vested in the State Government.

Having heard respective counsel and having perused the documents filed on record it is clear that the petitioner is not entitled for any relief whatsoever in the present proceedings. In Writ Petition No. 2494 of 2013 by judgment dated 19.09.2013 the challenge raised to the acquisition proceedings was not entertained by the Court on the ground that the same was raised belatedly. While deciding the same, the ground raised by the petitioner in respect of acquisition of 0.33 R land was also considered and the Court observed in para 8 therein as under:

“We also do not find any merit in the submission made on behalf of the petitioner that the respondent No. 1-Corporation has unauthorizedly started construction on .33 HR of land belonging to the petitioner though it is not acquired. There was no question of acquiring .33

HR of land as we find from the record that the land vested in the State Government under the provisions of the Urban Land Ceiling Act and the possession of the land was also delivered to the State Government in 2006. There are ample documents produced by the respondents to point out that the possession of the land was secured by the State Government in 2006 and the land was later on handed over to the respondent No. 1- Airport Development Company. The revenue records also name the State Government as the owner of .33 HR of land since the year 2006. it is pertinent to note that the petitioner has not paid any land revenue for .33 HR of land after 2006. If according to the petitioner the land belongs to the petitioner, the petitioner should have paid the land revenue for the same and produced the receipts thereof. There is voluminous material in the form of documents to show that the possession of .33 HR of land was secured by the State Government in the year 2006 and the land was possessed by the State Government since then.”

This order dated 19.09.2013 was sought to be challenged by filing a Special Leave Petition but the same was not entertained by the Hon'ble Supreme Court which dismissed it on 17.11.2014.

It is therefore clear from the aforesaid order that a finding has been recorded that 0.33 R land which is the subject matter of the present writ petition already stood vested in the State Government under the provisions of Urban land Ceiling Act, 1976 and the possession was also delivered in the year 2006. If this order would have been taken into consideration by the State

Government, the notification dated 02.05.2014 could not have been issued. There was no question of acquiring the land which already vested with the State Government which finding was already recorded in the earlier proceedings. Thus, in effect the notification dated 02.05.2014 does not have any legal sanctity and therefore the petitioners cannot seek any relief, whatsoever on the basis of said notification. If the petitioner is permitted to take advantage of the Notification dated 02.05.2014, the same would have the effect of giving a go bye to the order dated 19.09.2013 that was passed in Writ Petition No. 2494 of 2013.

In view of aforesaid, there is no case made out to interfere with the writ petition. The writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

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