

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5783 OF 2006

Vishnudev Co-op.Hsg.Society)
 A Registered Society, through its)
 Secretary/Chairman & having its)
 Registered office at : S.No.210,)
 Mauje Wakad, Tal.Mulshi, Dist.Pune.) ...Petitioner

Versus

1.Revenue And Forest Dept.)
 through its Minister,)
 State of Maharashtra)

 2. State Government of Maharashtra)

 3. Pimpri Chinchwad New Town)
 Development Authority, Sector No.24,)
 Nigdi, Pune – 411044) ...Respondents

Mr.S.L.Suryawanshi, for the Petitioner.

Mr.PP.Kakade, AGP for Respondent Nos.1 and 2.

Mr.Vijay Patil, for Respondent No.3.

CORAM : **DR. MANJULA CHELLUR, C. J., & G.S.KULKARNI, J.**

DATE : **FEBRUARY 28, 2017**

JUDGMENT : (Per: G.S.Kulkarni,J.)

1. The Petitioner a registered Co-operative society, was the owner of land admeasuring 10H 33 R forming part of land bearing Survey No.210/1 situated at Mauje Wakad, Taluka Mulshi, District Pune (for short "the said land"). This land was subject matter of an acquisition for the purpose of 'Pimpri Chinchwad New Town Development Authority', under an award dated 23 September 1986 made under Section 11 of the Land Acquisition Act,1894 (for short 'the 1894 Act'). The petitioner thereafter approached the State Government by an application under Section 48(1) of the 1894 Act, seeking withdrawal of the lands from acquisition. This application came to be allowed by an order dated 10 June 2004 passed by the Minister (Revenue) whereby the land of the petitioner came to be deleted from acquisition. Also by an order dated 10 June 2004 further directions were given to the Revenue and Forest Department to issue appropriate notification to give effect to the deletion of this land from acquisition.

2. The grievance of the petitioner is that despite the orders dated 10 June 2004 passed by the statutory authority-the Minister (Revenue) deleting the land from acquisition, further

steps to issue appropriate notifications, to give effect to the order passed under Section 48(1) of the 1894 Act, are not being taken by Respondent Nos.1 and 2. The petitioner is accordingly before us seeking the following relief:-

“(a) for a writ of mandamus, for a writ in the nature of mandamus or for any other appropriate writ, direction or order directing the respondents to forthwith comply with the order dtd. 10/06/2004 passed by the Ld.Minister (Revenue) in L.P.O.No.34/1989/2304/C.R.No.257/A3 and accordingly the respondents may be directed to issue an appropriate notification in pursuance of the said order dtd.10/06/2004 passed by the Ld.Minister (Revenue) in L.P.O.No.34/1989/2304/C.R.No.257/A3.”

3. The Respondents-State has appeared and has filed a reply affidavit dated 11 December 2006 of Mr.Kamlakar Yeshwant Vanjare, Desk Officer, Revenue & Forest Department, interalia opposing the prayers as made in the petition. A further affidavit of Neela Satyanarayana, Principal Secretary (Forests) is filed. The contents of the affidavit are almost similar except referring of some decisions in paragraph 6 of the 2nd affidavit. The contention in these reply affidavits is that the said order under Section 48(1) is a 'provisional order' for the reason that it is not communicated, and thus the order is not an effective order. However, while saying so, it is not disputed that the order is passed by the Minister for Revenue. We note the contents of paragraphs 4 to 6

of the affidavit of Mr.Kamlakar Y. Vanjare, which read as under:-

“4. I say that the Petitioner society has made an application before the Hon'ble Minister for Revenue and upon their application the hearing was given to the Pimpri Chinchwad New Development Authority, Special Land Acquisition Officer, Pune and the Applicant, Society. Hence, the aforesaid order dated 10.6.2004 came to be passed after hearing all the parties. Subsequently, it was withheld, since a objection from one Shri.A.PVibhute, Advocate was received stating that the said land is Government land. I say that after noticing this fact, the Revenue and Forest Department consulted Law and Judiciary Department in this case. The Law and Judiciary Department, opined that “it appears that as per record the land is vested in Government.

5. I say that upon Shri.Vibhute's complain the enquiry was made and it was observed from record that while handing over possession the Pimpri Chinchwad New Township Development Authority refused to take the possession of land and therefore the land was shown as “Maharashtra Shasan” in the record. While this was being considered the process of General Election of Assembly was commenced. After new Government took over all the pending cases were clubbed together and sent to Law and Judiciary Department for there advice as per Ld.Chief Secretary's directives.

6. I say that accordingly, the Law and Judiciary Dept. has opined that it is settled position in law by now that mere passing of an order is not sufficient and the same does not become effective unless it is communicated to the concerned persons. Until that is done it is of a provisional character and can be changed. In view of above, in this case it is for the Government in Revenue and Forest Department to see whether the matters need to be considered afresh or the orders already passed be issued. Reference is answered accordingly.” (emphasis supplied)

4. A reading of the above paragraphs of the reply affidavit would show that the Minister for Revenue who was a competent authority, to decide the petitioner's application under Section 48(1) of the 1894 Act, considered the petitioner's

application and passed the order in question. It is also quite clear that the order dated 10 June 2004 came to be passed by the Minister. There is also no dispute that the order was signed by the Minister.

5. On the above background, the stand of the State Government now being taken in paragraph 6 of the affidavit is required to be considered. The contention in paragraph 6 of the reply affidavit is that mere passing of the said order was not sufficient and that the same would not be effective unless it is communicated to the concerned persons. Until the same is done the order is provisional in character. The deponent in so contending however, has not supported this submission by showing that the order was not issued or communicated, on any acceptable material. A copy of the said order is also placed on record. The relief which is sought by the petitioner is also on the foundation of the said order having been passed by the Minister (Revenue). The Respondents do not contend that the order was never passed and/or it is not on the record of the Government.

6. We may observe that, when it is not in dispute that the Minister (Revenue) was the competent authority to decide the petitioner's application under Section 48(1) of the 1894 Act and accordingly the order in question came to be passed by him, as also signed in the normal course of business, there is presumption that the order has been made in exercise of the authority and power as conferred under the provisions of the statute and it is validly made. A perusal of the said order passed by the Minister (Revenue) also indicate clear expression of opinion on the issues which fell for consideration of the Minister (Revenue). It is a detailed reasoned order running into 25 paragraphs. It cannot be accepted that the authority would pass an order and not issue the same, unless there is express bar for the authority to issue the order under the rules or some requirements/formalities to be completed, before issuance of the same. In the present case, firstly the order is passed by the highest authority at the level of the State Government. Secondly, the order is very much part of the record and the same came to be issued and was available to the Petitioners. Further what is significant is that Respondent

No.3 has also not challenged the said order passed by the Minister (Revenue) when it was well aware that the order in question was passed and issued, even assuming that it came to their knowledge when this writ petition was served on them. It was not sufficient for Responder No.3 to merely raise an assertion in the reply affidavit that the order is not legal and binding on respondent No.3, since according to respondent No.3 unless a notification is issued in terms of Section 48 of the 1894 Act, they are not obliged to challenge. The learned Counsel Counsel for respondent No.3 has contended that qua respondent no.3 there is no order in existence in the light of paragraphs 5 and 6 of the State's reply, on the ground that it was a provisional order.

7. We cannot accept the contention as urged on behalf of the State Government as also on behalf of Respondent No.3. We are of the clear opinion that order dated 10 June 2004 as passed by the Minister (Revenue) deleting the land of the petitioner from acquisition was validly made, and as also a copy of the same was issued to the petitioner in the absence of any material to the contrary. The respondents cannot be heard for the first time in

the writ petition that is almost two years after passing of the said order dated 10 June 2004 and for that matter now in the year 2017, to contend that the order was not legally issued. The State is not in a position to support its contention that the order was a provisional order. We are at a complete loss to comprehend as to what can be meant by a 'provisional order' in the present context as the State would contend.

8. The contention of the State that the order of the Minister (Revenue) is of a provisional character, cannot be accepted if we consider as to what would be the meaning of 'provisional order'. *In the Advanced Law Lexicon, (P. Ramanatha Aiyar), 3rd Edition would define a provisional order as under :*

“Provisional order. *An order of a tribunal granting, on a provisional basis, any relief it would have the power to grant in a final award, also known as a provisional award (Arbitration)”*

The *Black's Law Dictionary*” *Eighth Edition* defines the word “provisional” as under:-

“Provisional: 1. Temporary (a provisional injunction). 2. Conditional (a provisional government).

9. Thus if we accept the respondents' contention then we would be required to hold that the order passed by the Minister (Revenue) is granting only a temporary, provisional relief to the petitioner, in terms of section 48 (1) of the 1894 Act. However, whether section 48 (1) admits of such a situation would be required to be seen. Section 48 (1) of the 1894 Act reads thus :

“48 Completion of acquisition not compulsory, but compensation to be awarded when not completed.

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

... ..”

10. The contention of the respondents on a plain reading of section 48 (1) of the 1894 Act cannot be accepted. Section 48 (1) of the 1894 Act confers a power on the State Government to withdraw those lands from acquisition, the possession of which is not taken. This provision does not speak about any provisional or conditional order to be issued. In the present context, there is no material to deviate from the normal rule that when the competent authority in exercise of the statutory powers exercises such power,

the order or decision of such authority would come into force or become operative from the date the order is signed. The respondents thus cannot label the order of the Minister (Revenue) as if the order is 'still born'. We are therefore at loss to understand the plea of 'provisional order' in the context of section 48 (1) on the part of the State. It thus cannot be concluded that all the reasons as set out in the order of the Minister (Revenue) as also the exercise of jurisdiction, culminating into passing of the order, should be overlooked on the ground as urged on behalf of both the respondents. If Respondent No.3 was to firmly believe that the order in question is of no legal effect and consequence then, surely some steps/proceedings, would have been taken by Respondent No.3 in that regard to assert the said position. The fact remains that Respondent No.3 did not challenge the order passed by the Minister (Revenue) and/or no proceedings, came to be adopted by Respondent No.3 to even remotely indicate that Respondent No.3 was at any time aggrieved by the said order.

11. Once it is held that the land belonging to the petitioner is deleted from acquisition by an order passed by the

Minister (Revenue) exercising jurisdiction under Section 48(1) of the 1894 Act, the sequel is the issuance of an appropriate notification, to give effect to the said order passed under section 48 (1) of the 1894 Act. It cannot be a situation that an order under section 48(1) of 1894 Act was passed, and the effect of the same is not given by issuing the consequential notifications. The law in this context is well settled that even if there is an order for release of certain land from acquisition, the same could not be given effect to, in the absence of a notification denotifying the acquisition of land. (See “*Murari Vs. Union of India, 1997(1) SCC 15*”)

12. In view of the above discussion, we are of the clear opinion that the writ petition deserves to be allowed. It is accordingly allowed in terms of prayer clause (a) which reads thus:-

“(a) for a writ of mandamus, for a writ in the nature of mandamus or for any other appropriate writ, direction or order directing the respondents to forthwith comply with the order dtd. 10/06/2004 passed by the Ld.Minister (Revenue) in L.P.O.No.34/1989/2304/C.R.No.257/A3 and accordingly the respondents may be directed to issue an appropriate notification in pursuance of the said order dtd.10/06/2004 passed by the Ld.Minister (Revenue) in L.P.O.No.34/1989/2304/C.R.No.257/A3.”

The Respondents are directed to issue appropriate notifications within a period of 10 weeks from today. No order as to costs.

(G.S.KULKARNI, J.)

(CHIEF JUSTICE)