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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3482 OF 2016

M/s.Everplus Properties &
Investments and others ...Petitioners
vs.
The State of Maharashtra
and others ...Respondents

Mr.A.V.Anturkar, Senior Advocate i/b Mr.Sugandh
Deshmukh for the Petitioner
Mr.A.B.Vagyani, GP a/w Mr.Manish Pabale, AGP for the
respondent Nos.1 to 4.
Mr.Murlidhar L. Patil for reespondent No.

CORAM : A.S.OKA, &
SMT.VIBHA KANKANWADI, JJ.
DATE : JULY 6, 2017

P.C.:

1 By this petition under Article 226 of the Constitution of India, the challenge is to the acquisition proceedings initiated under the Land Acquisition Act,1894 (for short "the Land Acquisition Act"). The acquisition proceedings were initiated at the instance of the respondent No.5-Nashik Municipal Corporation for setting up Oxidation Plant and Pumping Station-Sewage Treatment Plant (for short "STP").

2 A notification under sub-section 1 of section 4 of the Land Acquisition Act read with section 17 thereof dated 20th September 2012 was lastly published on 29th November 2012 in Maharashtra

Government Gazette. A declaration dated 10th June, 2014 under section 6 of the Land Acquisition Act dated was lastly published on 17th April 2014. In Writ Petition No.5365 of 2014, by Judgment and Order dated 13th August 2014, this Court proceeded to set aside the declaration under section 6 of the Land Acquisition Act. Subsequently, a fresh declaration under section 6 was made by the State Government which was lastly published on 1st November 2014 by the Village Talathi. Thereafter, notices under sections 9(3)(4) and 9(1)(2) of the Land Acquisition Act were issued. An Award was made on 30th December 2014. In the Award, the compensation has been purportedly fixed under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short " New Land Acquisition Act"). On 29th January 2015, compensation amount of Rs.6,36,26,040/- was accepted on behalf of the petitioners by one Mr.Rathi under protest. On the very day, the possession of acquired land was handed over to the Special Land Acquisition Officer by the petitioners. We may also note here that within the time stipulated under section 18 of the Land Acquisition Act, an application under section 18 has been preferred by the petitioners without prejudice to their contention that the acquisition has lapsed. The present petition has been filed on 21st December 2015 for challenging the acquisition.

3 The learned senior counsel for the petitioners pointed out that even going by the dates given in

the Award, the declaration under sub-section 1 of section 6 was made after expiry of the period of one year from the date of last publication of the notification under sub-section 1 of section 4 of the Land Acquisition Act. He submitted that as a result of the failure to issue and publish a declaration under section 6(1) within the time specified under clause (ii) to proviso of section 6, the entire acquisition proceedings has lapsed. His second contention is that an enquiry under section 5A of the Land Acquisition Act has not been held in accordance with law. Lastly, he submitted that the petitioners have already made a statement which is recorded in the order dated 28th February 2017 that the petitioners have no objection if the the fresh acquisition proceedings are initiated. He stated that if this Court quashes the acquisition proceedings on the ground that the same has lapsed, the petitioners have no objection if the fresh acquisition proceedings are initiated within a reasonable period. He stated that subject to condition of the Government initiating new acquisition proceedings under the New Land Acquisition Act, the petitioners will not insist on taking back the possession of the acquired land.

4 The submission of the learned Government Pleader on behalf of the State Government is based on delay. He submitted that the petition has been filed nearly 11 months after handing over the possession of the acquired land. He relied upon the decision of the Apex Court *Swaika Properties (P)*

Limited and another v. State of Rajasthan and others¹. The learned counsel for the respondent no.5-Nasik Municipal Corporation submitted that the petitioners have accepted the compensation and have handed over the possession of the acquired land without recording any protest about the illegality of the process. The submission is that protest recorded is only as regards the quantum of compensation and the petitioners have already applied for reference under section 18 of the Land Acquisition Act.

5 The learned senior counsel for the petitioners submitted that in the case of Swaika Properties (P) Limited, there is no absolute proposition of law laid down and the said decision is explained in the subsequent decision of the Apex Court in the case V.K.M. Kattha Industries (P) Ltd. v. State of Haryana². He urged that in the present case, the acquisition has lapsed and therefore, the issue of delay does not arise. He submitted that in the present case, the petitioners have co-operated by handing over possession of the acquired land and have also showed willingness not to insist on the restoration of the possession of the acquired land subject to the State Government initiating acquisition proceedings under the New Land Acquisition Act. He, therefore, submitted that the delay will not come in the way of the petitioners while prosecuting this petition and this Court ought

1 (2008) 4 SCC 695

2 (2013) 9 SCC 338

to quash the acquisition proceeding on the ground that the same has lapsed.

6 We have given careful consideration to the submissions. The existence of the public purpose has been accepted by the petitioners as is clear from the statement recorded in the order dated 28th February 2017.

7 The impugned Award records that the notices under section 9 were issued on 1st November 2013 and inquiry was held on 22nd December 2014 as regards fixing the compensation. This factual aspect is not disputed by the petitioners. As stated earlier, by the Award, compensation offered has been purportedly fixed in accordance with the provisions of the New Land Acquisition Act. On 29th January 2015, the compensation for the acquired land was received by Shri Mahesh Rathi on behalf of the petitioners as evidenced by the document at page 255 annexed to the affidavit in reply filed by the State Government. The compensation of Rs.6,36,26,040/- was accepted by the petitioners under protest. It is not in dispute that the petitioners made an application for a reference under sub-section 1 of section 18 of the Land Acquisition Act by stating that the same was filed without prejudice to the contention of the petitioners that the acquisition was illegal.

8 After voluntarily handing over possession of the acquired land to the Special Land Acquisition

Officer on 29th January 2015, there seems to be a long inaction on the part of the petitioners. It is not the case made out by the petitioners that by making any representation in writing to the State Government or to any of its Officer or to acquiring body the petitioners contended that the acquisition has lapsed or the acquisition has been rendered illegal.

9 Coming to the averments made in the petition, in paragraph 41 of the petition, it is averred by the petitioners that in the month of November 2015, they decided to file the present petition. They have stated that after consulting their Advocate, they accepted the compensation on 29th January 2015 on the basis of the Award made on 30th December 2014. The petitioners decided to file the present petition for the first time in November 2015.

10 At this stage, we may make a reference to the decision of the Apex Court in the case of Swaika Properties (P) Limited. In paragraphs 15 to 19, the Apex Court has held thus:

"15 In so far as the contention regarding the possession having not been taken is concerned, the respondents submit that the possession of the land in dispute has already been taken. Be that as it may, the award in respect of the land having become final, the State Government is vested with the powers to take possession of the land concerned and,

therefore, there is no reason to disbelieve the claim of the State Government that the possession had been taken before the filing of the writ petition. Moreover, the appellants sought enhancement of compensation by filing reference application under section 18 of the Land Acquisition Act, 1894. Simultaneously, the appellants filed writ petition before the High Court of Rajasthan after passing of the award.

16 This Court has repeatedly held that a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable. In *Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co. (P) Ltd* where K. Ramaswamy, J speaking for a Bench consisting of His Lordship and S.B. Majumdar, J. held (SCC p.520, para 29)

"29. It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under section 4(1) and declaration under section 6. But it should be exercised taking all

relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third-party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

In the concurring judgment, S.B.Majmudar, J. held as under (Industrial Development Investment case, CC pp.522-23, para 35)

"35...Such a belated writ petition, therefore, was rightly rejected by the learned Single Judge on the ground of gross delay and laches. The respondent-writ petitioners can be said to have waived their objections to the acquisition on the ground of extinction of public purpose by their own inaction, lethargy and indolent conduct. The Division Bench of the High Court had taken the view that because of their inaction no vested rights of third parties are created. That finding is obviously incorrect for the simple reason that because of the indolent

conduct of the writ petitioners land got acquired, award was passed, compensation was handed over to various claimants including the landlord. Reference applications came to be filed for larger compensation by claimants including writ petitioners themselves. The acquired land got vested in the State Government and the Municipal Corporation free from all encumbrances as enjoined by Section 16 of the Land Acquisition Act. Thus, right to get more compensation got vested in diverse claimants by passing of the award, as well as vested right was created in favour of the Bombay Municipal Corporation by virtue of the vesting of the land in the State Government for being handed over to the Corporation. All these events could not be wished away by observing that no third-party rights were created by them. The writ petition came to be filed after all these events had taken place. Such a writ petition was clearly stillborn due to gross delay and laches."

17 Similarly, in State of Rajasthan v. D.R.Laxmi following the decision of this Court in Municipal Corporation of Greater Bombay it was held : (D.R.Laxmi case SCC p.452 para 9)

"9...When the award was passed and possession was taken, the Court should not

have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third-party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

18 To the similar effect is the judgment of this Court in *Municipal Council, Ahmednagar v. Shah Hyder Beig* wherein this Court, following the decision of this Court in *C. Padma v. Dy.Secy. to the Govt. of T.N.* held: (Shah Hyder case, SCC p.55 para 17)

"17 In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases (*C. Padma V. Dy.Secy. to the Govt. of T.N.*)....."

19 In the present case also, the writ petition having been filed after taking over the possession and the award having become final, the same deserves to be dismissed on the ground of delay and laches. Accordingly,

the orders of the learned Single Judge and that of the Division Bench are affirmed to the extent of the writ petition and the special appeal without going into the merits thereof. This appeal also deserves to be dismissed without going into the merits of the case and is dismissed as such. No costs."

(underline provided)

11 It is true that in the subsequent decision in the case of V.K.M. Kattha Industries (P) Ltd (supra) the Apex Court had considered the decision in the case of Swaika Properties (P) Limited by observing that whether the delay in challenging the acquisition proceedings is fatal depends upon the facts of each case. In paragraph 10 of the said decision the Apex Court noted that the appellant company before it had filed the writ petition within five weeks from the date of passing the Award.

12 The petitioners were aware about the declaration under section 6 in November 2014. They were also aware of the impugned Award in January 2015. They accepted the compensation on 29th January 2015 and handed over possession of the acquired land on the same day. The document of handing over possession and the documents recording receipt of the compensation show that the words "under protest" have been used in the context of the fact that the petitioners were desirous of filing an application for enhancement of compensation under the Land

Acquisition Act. In any case, after voluntarily handing over possession on 29th January 2015, the decision to file the present petition was taken by the petitioners in November 2015. Therefore, in the facts of the case, the delay in filing the petition will be fatal especially when the petition is filed after about 11 to 12 months from the date of the impugned Award and after 11 months from the date of handing over possession and after accepting the compensation.

13 As we are dismissing the petition on the ground of delay, it is not necessary to go into the question of legality of the alleged enquiry under section 5A. There is no merit in the petition and the same is accordingly dismissed.

(VIBHA KANKANWADI, J.)

(A.S.OKA, J.)