

HON'BLE SRI JUSTICE P.KESHAHA RAO

WRIT PETITION No.29100 of 2008

ORDER:

Heard both the parties.

The writ petition came to be filed questioning the action of the respondents in not handing over the subject property to them.

It is the case of the petitioners that they are the absolute owners of subject property in the writ petition, it being the ancestral joint property. In the year 1973 the respondents acquired large extent of the land which include the petitioners for the purpose of extension of artillery centre. The subject land was taken possession under the provisions of the Requisition and Acquisition of Immovable Properties Act, 1952. But, the respondents are not using the subject land for the artillery centre. It is also stated that till date the said lands are kept vacant. In that connection, the petitioners submitted representations to release the subject lands and hand over the same to them.

Per contra, a counter-affidavit has been filed on behalf of the respondents. In the said counter-affidavit, it is specifically denied that no construction activity is made in the subject land and it is not developed. Though the subject land was initially requisitioned, later on, it was acquired duly following the procedure by the respondents. In fact, the father of the petitioners not satisfying the rate fixed by the Collector vide proceedings dated 04.03.1971, filed claim petition dated 10.03.1970 seeking enhancement and an Arbitrator was appointed vide G.O.Ms.No.205, Revenue(K) Dept.

dated 21.03.1972. After an enquiry, the Arbitrator passed an Award dated 18.08.1974 enhancing the compensation and the same was also paid as mentioned in the counter affidavit. It is categorically mentioned that the subject land has been acquired for the artillery centre and it is being utilized for the same purpose only. It is further mentioned that the representation submitted by the petitioner was also disposed of pursuant to the interim orders passed by this Court in the present writ petition. It is also further stated that when once the land has been acquired for any public purpose, it cannot be restored back to the land holders or persons interested even if it is not used for the purpose for which it was so acquired or for any other purpose. Though counter affidavit is filed, there is no rebuttal from the petitioners denying that the subject land is not being used for the purpose of artillery centre.

Having heard both the learned counsel and from the perusal of the material on record, it is clear that though the petitioners have stated that the subject land is not utilized for the purpose for which it is acquired i.e. for extension of artillery centre, the respondents in the counter affidavit denied the same mentioning that it is being used only for the purpose of artillery centre. In fact, when once the land is acquired for any public purpose, it cannot be restored to the land owners, even if it is not used for the said purpose for which it was acquired.

In fact, the Apex Court in **GULAM MUSTAFA AND OTHERS v. THE STATE OF MAHARASHTRA AND OTHERS**¹ had an occasion to consider the similar issue and held as under:

¹ AIR 1977 SC 448

“At this state Shri Deshpande complained that actually the Municipal Committee had sold away the excess land marking them out into separate plots for a housing colony, apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the [s. 5\(3\)](#) declaration.”

That apart, when once by virtue of acquisition of any property, if it is vested in the Government, how it has to be utilized is for the government to decide. However, in the case on hand, the petitioners are raising a claim on the ground that it is not being utilized for the purpose for which it was acquired. In the light of the specific denial by the respondents in the counter, this Court is of the opinion that there are no merits in the writ petition and it is liable to be dismissed.

Accordingly, the writ petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

P.KESHAHA RAO,J

Date:02.11.2018

ccm

THE HONOURABLE SRI JUSTICE P.KESHA RAO

WRIT PETITION No.29100 of 2008

Date:02.11.2018

ccm