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

Writ Petition No.1458 of 2018

Ramchandra S/o Ajabrao Chinchurkar
and others … Petitioners

Versus

The State of Maharashtra and others … Respondents

Mr. M.D. Chikhale, Advocate for Petitioners.
Ms Shamsi Haider, Assistant Government Pleader for Respondent Nos.1 and 2.
Mr. M.G. Bhangde, Senior Advocate, assisted by Mr. S.S. Sarda, Advocate for Respondent No.4.

CORAM : NITIN JAMDAR AND ANIL L. PANSARE, JJ.

DATE : 12 APRIL 2022

P.C.:

Heard the learned Counsel for the parties.

2. The Petitioners have challenged the order passed by the Respondent No.1- Collector, Nagpur on 9 August 2017 upon the representation made by the Petitioners to restore/return the land stated to be owned by the Petitioners which was acquired in the year 1971.

3. The Petitioners claim that they were the owners of Survey Nos.20, 11/3, 11/4, 7/23 and 10/2 situated at Mouza Khaperkheda, Tahsil Kamptee, District Nagpur. On 1 July 1971, a notification under Section 4 of the Land Acquisition Act, 1894 ("the Act of 1894) was issued stating that the State Government required the total land near about 100.19 acres at Village Khaperkheda and Koradi for construction of Tail Tank of Pench Project. The notification under Section 6 of the Act of 1894 was issued on 21 July 1971. Thereafter, the award was declared by the Special Land Acquisition Officer, Pench Project on 12 July 1972 in respect of extent of 100.30 acres of land. The land was transferred to the Maharashtra State Electricity Board, the predecessor of Respondent No.3- Maharashtra State Power Generation Company Limited, on 7 February 2007. The 10 acres of land out of the same was allotted to Respondent No.4- Educational Institute by a registered lease-deed for a period of 30 years on 10 November 2015.

4. A Writ Petition, bearing No.63 of 2016, was filed by the Petitioners seeking cancellation of lease-deed executed between the Respondent No.3- Maharashtra State Power Generation Company Limited and the Respondent No.4- Educational Institute. The Petition was withdrawn on 26 October 2016 with liberty to make a representation. The representation was considered by the Collector, Nagpur, and by order dated 9 August 2017, the representation was rejected. Challenging this order, the Petitioners are before us.

5. We may note here that a Public Interest Litigation, bearing No.132 of 2017, was filed challenging the allotment of 10 acres of land to the Respondent No.4- Educational Institute. Various contentions were raised that the allotment was against public interest, that there being no resolution and no auction and that the allotment was in violation of the Land Disposal Rules. The Division Bench noted that the subject-land was granted to the Respondent No.4- Educational Institute in the year 2015, the construction had commenced in 2015 itself and the estimated cost of the School project was Rs.42 crores and the construction was completed in May 2018. From 2016-17, the School has become functional. It has 1,781 students. In that context, the Division Bench looked into the aspect of delay and suppression of earlier orders passed. Therefore, the challenge to the allotment to the Respondent No.4- Educational Institute was examined by the Division Bench and the same was not interfered with.

6. The Petitioners' claim therefore, and as made it clear by the Counsel for the Petitioners, is for return of the land. This claim is based on the assertion that the acquired land was not put to use for the public purpose, firstly by transferring it to the Respondent No.3- Maharashtra State Power General Company Limited and thereafter part of it to the Respondent No.4- Educational Institute. The learned Counsel for the Petitioners has relied upon the decisions of

the Supreme Court in *Sulochana Chandrakant Galande Vs. Pune Municipal Transport and others,*[1] *Kedar Nath Yadav Vs. State of West Bengal and others*[2], *Uddar Gagan Properties Limited Vs. Sant Singh and others*[3], and *M/s. Royal Orchid Hotels Limited and Anr. Vs. G. Jayarama Reddy and Ors.*[4]

7. Reply affidavit is filed by the State through the Collector. From this reply affidavit, following facts emerge. The land belonging to the predecessor in title of the Petitioners as mentioned in the present petition came to be acquired *vide* land acquisition case no.66/A-65/71-72, Mouza Khaperkheda *vide* award dated 12-07-1972, Mouza Khaperkheda *vide* award dated 12-07-1972 for the purpose of Tail Tank of Pench Project in Village Khaperkheda. It was handed over to the Executive Engineer, Pench Canal, Division Nagpur. Mutation entries dated 22.04.2008 indicate that as per the agreement in between Electricity Board and Irrigation Department and as per the directions of the Government and the order bearing no. Revenue/B-1/WS-201/2007, dated 07.02.2007 the land in question was recorded in the name of Koradi Power Project. The acquired land had to be used for other co-lateral purposes viz., Residential Colony, Administrative and other Official purposes, for Officers and Employees of Companies and for the Welfare of Project Affected Persons. The Respondent- Power Company implemented various Welfare Schemes through Corporate Social Responsibility and so also allots the land for basic Social needs namely Hospitals,

1 (2010) 8 SCC 467
2 2016 AIR(SC) 4156
3 2016 AIR(SC) 2526
4 2011 AIR SCW 6081

School, Police Station for the Welfare of employees and for the Welfare of surrounding inhabitant Citizens. Central Environmental Committee, Ministry while giving consent had incorporated a condition that the Respondent- Company will make arrangement for rendering education to the surrounding inhabitants. The Respondent- Educational Institute was requested by the officers for inculcating effective advanced education. The Respondent has agreed to start school over the land in question and as such an agreement came to be executed in pursuance of a Resolution approved by the MAHAGENCO Board Meeting dated 23.09.2015 and as such a memorandum of understanding came to be signed by the MAHAGENCO Employees and Bharatiya Vidya Bhawan on 02.11.2015 and consequently the land in question came to be allotted to the Bharatiya Vidya Bhawan for a lease having 30 years period. Therefore, it is clear that the allegation of the Petitioners that the land was never put to public purpose, is not correct.

8. In the impugned order, the stipulation by the Ministry of Environment regarding educational facilities to be provided to the residents of the area is noted and it is pursuant to that, the 10 acres of land was given to the Respondent No.4 for the educational purposes. In the impugned order, it is stated that in view of the fact that the land was put to public use pursuant to the stipulation by the Ministry of Environment while granting permission, there is no question of absence of public purpose in the use of the land or that it has been abandoned.

9. The Supreme Court in the case of *Sulochana Chandrakant Galande* considered the legal position as to the vesting of land upon acquisition. The Supreme Court considering the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, noted that the provisions of the Act of 1976 are analogous to Section 16 of the Act of 1894. In context thereof, the Supreme Court observed thus :

> *"12. The provisions of Section 10(3) of the 1976 Act are analogous to Section 16 of the Land Acquisition Act, 1894 (hereinafter called "the 1894 Act"). Acquisition proceedings cannot be withdrawn/abandoned in exercise of the powers under Section 48 of the 1894 Act or Section 21 of the General Clauses Act, 1897 once the possession of the land has been taken. [Vide State of M.P. v. Vishnu Prasad Sharma, Lt. Governor of H.P. v. Avinash Sharma, Pratap v. State of Rajasthan, Mandir Shree Sita Ramji v. Collector (L.A.), Bangalore Development Authority v. R. Hanumaiah and Hari Ram v. State of Haryana.].*
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> *13. The meaning of the word "vesting" has been conidered by this Court time and again. In Fruit & Vegetable Merchants Union v. Delhi Improvement Trust this Court held that the meaning of the word "vesting" varies as per the context of the statute in which the property vests. While considering the case under Sections 16 and 17 of the 1894 Act, the Court held as under: (AIR p. 353, para 19)*
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>> *"19. … the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration."* *(emphasis added)*

14. "Encumbrance" actually means the burden caused by an act or omission of man and not that created by nature. It means a burden or charge upon property or a claim or lien on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of the land. It may be a mortgage or a deed of trust or a lien of an easement. An encumbrance, thus, must be a charge on the property. It must run with the property. (Vide Collector of Bombay v. Nusserwanji Rattanji Mistri, H.P. SEB v. Shiv K. Sharma and AI Champdany Industries Ltd. v. Official Liquidator.

15. In State of H.P. v. Tarsem Singh, this Court held that the terminology "free from all encumbrances" used in Section 16 of the 1894 Act, is wholly unqualified and would encompass the extinguishing of "all rights, title and interests including easementary rights" when the title vests in the State.

16. Thus, "free from encumbrances" means vesting of land in the State without any charge or burden in it. Thus, the State has absolute title/ownership over it.

17. In Satendra Prasad Jain v. State of U.P., this Court held that once lands vests in the State free from all encumbrances, it cnnot be divested. The same view has been reiterated in Awadh Bihari Yadav v. State of Bihar, U.P. Jal Nigam v. Kalra Properties (P) Ltd., Pratap, Chandragauda Ramgonda Patil v. State of Maharashtra, Allahabad Development Autority v. Nasiruzzaman, State of Kerala v. M. Bhaskaran Pillai, M. Ramalinga Thevar v. State of T.N., Printers (Mysore) Ltd. v. M.A. Rasheed, Bangalore Development Authority v. r. Hanumaiah and Govt. of A.P. v. Syed Akbar.

18. So far as the change of user is concerned, it is a settled legal proposition that once land vests in the State free *from all encumbrances, there cannot be any rider on the power of the State Government to change user of the land in the manner it chooses.*

19. In a similar situation, in Gulam Mustafa v. State of Maharashtra, this Court held as under: (SCC p. 802, para 5)

> *"5. …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 … declaration."*

20. Reiterating a similar view in C. Padma v. Govt. of T.N., this Court held that if by virtue of a valid acquisition of land, the land stands vested in the State, thereafter, the claimant are not entitled to restoration of possession on the grounds that either the original public purpose has ceased to be in operation or the land could not be used for any other purposes.

21. In Bhagat Singh v. State of U.P., Niladri Narayan Chandradhurja v. State of W.B., and Northern Indian Glass Industries v. Jaswant Singh, this Court held that, the land user can be changed by the statutory authority after the land vests in the State free from all encumbrances.

22. In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the landowner how his land is used and whether the land is being used for the purpose for which it was acquired or for ay other purpose. He becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of *restoration of land on any ground, whatsoever."*

10. In this case that the land was acquired by the State and that it had vested in the State Government, it is beyond the dispute. The predecessor of the Respondent No.3, that is Maharashtra State Electricity Board, was also a public body. Therefore, once the land was acquired and vested in the State, the Petitioners would lose their right to seek return thereof. In the reply filed by the State, reference is made to the Government Resolution dated 12 March 2004 that if the land after acquisition is found surplus it can be used for other public purpose and should not be returned to the original land owner. There is, therefore, no right in the Petitioners to claim return of the land. The Petitioners were paid compensation which they had accepted and all their rights stood extinguished. Therefore, the Petitioners' individual right to claim return of the property does not exist. As stated earlier, the challenge to the allotment to the Respondent No.4- Educational Institute was not entertained by the Division Bench of this Court in public interest litigation.

11. As regards the decisions cited by the learned Counsel for the Petitioners, these were the cases where the Hon'ble Supreme Court found that there was a colourable exercise by the State while acquiring the land that the acquisition was done for the benefit of a private body and that the State had intended to acquire the same for the benefit. In the case of *Kedar Nath Yadav*, where the land was acquired for automobile industry, the Supreme Court observed that

the acquisition of the land for and at the instance of the Company was disguised as the acquisition for public purpose is to circumvent the compliance with the mandatory provisions of the Land Acquisition Act. Such is not the case in the present matter. In the case of *Uddar Gagan Properties Limited* also, the Supreme Court found that the power used for acquisition of the land was used mala fide to advance the private interest of a developer. Again, the facts in this case are completely different. *M/s. Royal Orchid Hotels Limited* is again a case where the Supreme Court on facts found that the acquisition was a mala fide exercise of power. After noting the events that had transpired, the Hon'ble Supreme Court found that a real estate developer, who had already entered into agreements with some of the landowners for purchase of land, was prepared to provide funds and thereafter the public body passed a resolution for transfer of the land to the developer. The Supreme Court found that the transactions revealed the true design of the officers of the Corporation. The Supreme Court found that the exercise was patently illegal and fraudulent, targeted to favour a particular person. In the present case, it is not the Petitioners' contention that the acquisition itself was colourable or mala fide.

12. In the case at hand, the award is of the year 1972 and the lands stood vested in the State Government in the year 1972. The Petitioners have no right to claim the return of the land. The acquisition was under the Land Acquisition Act, 1894, which does not confer any such right.

13. There is, therefore, no merit in the Petition, which is accordingly rejected.

(ANIL L. PANSARE, J.) (NITIN JAMDAR, J.)