



THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14773 OF 2019
WITH
CIVIL APPLICATION NO. 650 OF 2023

Khaja Hussein Shaikh Lal (died)
Through his Legal Heirs.

1. Muner Khaja Hussain Shaikh (Died)
Through his Legal Heirs

1-A Shamshadbi Muner Shaikh
Age 55 Years, Occu: Household
R/o Bembli, Tq. & Dist. Osmanabad

1-B Yasmin Abdul Gani Shaikh
Age 35 years, Occu: Household
R/o As above.

1-C Rabia Irfan Shaikh
Age 32 Years, Occu: Household
R/o As above

1-D Isub Muner Shaikh
Age 30 years years Occu: Labour

1-E Rehman Muner Shaikh
Age 28 years, Occu: Labor
R/o As above

1-F Suleman Muner Shaikh
Age- 26 years, Occu: Labour
R/o As above.

2. Hujur Khaja Hussein Shaik (Died)

2-A Rajiyabi Hujur Shaikh
Age 55 years, Occu: Household
R/o As above.

2-B Bilal Hujur Shaikh,
Age 28 years, Occu: Labour
R/o As Above,

2-C Shahin Mujafar Shaikh
Age 26 years, Occu: Household
R/o As above.

2-D Najmin Hujur Shaikh
Age 24 years, Occu: Household
R/o As above.

... **Petitioners**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Transport Department,
Mantralaya, Mumbai

2. Maharashtra State Road Transport
Corporation, Maharashtra Vahatuk Bhavan,
Dr. Annandrao Nair Marg, Mumbai Central,
Mumbai

3. The Land Acquisition Officer/
Sub Divisional Officer, Sub Divisional Office,
Osmanabad, Dist. Osmanabad.

4. The District Collector,
Collector Officer, Osmanabad.

5. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Osmanabad Division,
Osmanabad.

... **Respondents**

Ms. N. I. Deshmukh, Advocate for the Petitioners

Mr. S. B. Narwade, AGP For the Respondent Nos. 1, 3 and 4

Mr. D. S. Bagul, Advocate for Respondent Nos. 2 and 5

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRAGADE, JJ.
RESERVED ON : 13.02.2024
PRONOUNCED ON : 13.03.2024

JUDGMENT (Per - Y. G. Khobragade, J.):

1. By the present Petition under Article 226 of the Constitution of India, the Petitioners have put forth prayer clauses (B) and (B-1) as under:

"(B) By issuing appropriate writ, order or direction, the respondents may kindly be directed to restore the acquired land admeasuring 1 H 64 R of the land Gut No. 165 situated at Bembli Tq. and Dist. Osmanabad to the Petitioners by quashing and setting the land acquisition award dated 07.01.1997 and for that purpose, necessary directions be issued.

(B-1) By issuing appropriate writ, order or direction, the respondents may kindly be directed to restore the acquired land admeasuring 1 H 64 R of the land Gut No. 165 situated at Bembli Tq. and Dist. Osmanabad to the Petitioners in view of the provisions of section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and for that purpose, necessary directions be issued."

2. Petitioner Nos. 1 & 2 were children of Khaja Hussein Shaikh Lal and Petitioner Nos. 1 A to 1 F and 2 A to 2 D are grandchildren of Khaja Hussein Shaikh Lal who was the original owner of land Gut No.

165 admeasuring 1 H 64 R situated at Bembli Tq. and Dist. Osmanabad. The said Khaja Hussein Shaikh Lal died on 22.02.1993.

3. Petitioner Nos. 1 A to 1 F and 2 A to 2 D, who are grandchildren of Khaja Hussein Shaikh Lal, are claiming restoration of land admeasuring 1 H 64 R out of Gut No. 165 situated at Bembli Tq. and Dist. Osmanabad under Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter to be referred as 'the Act of 2013').

4. Ms. N. I. Deshmukh, the learned Advocate appearing for the Petitioners submits that during lifetime of Khaja Hussein Shaikh Lal, Respondent No. 5 sent a proposal dated 30.10.1991 to Respondent No. 3 for acquisition of land for construction of mini bus-stand. Accordingly, notification was published under section 4 of the Land Acquisition Act 1894 on 11.03.1992. The Notification under section 6, Land Acquisition Act 1894 was published on 02.04.1994. Thereafter on 23.05.1994, Respondent No. 3 issued notices under Sections 3 and 4 of the Land Acquisition Act 1894. Accordingly, an Award was passed on 07.01.1997 and the land of the Petitioners bearing Gut No. 165 admeasuring 1 H 64 R situated at Bembli Tq. and Dist. Osmanabad was acquired. On 12.08.1998, Respondent No.3 issued a notice under section 12(2) to

Mr. Khaja Hussein Shaikh Lal calling upon him to accept compensation amount to the tune of Rs.79,376/-. Since, Mr. Khaja Hussien Shaikh Lal died on 22.02.1993, his children i.e. Petitioner No. 1 Muner Khaja Hussain Shaikh and Petitioner No. 2 Hujur Khaja Hussain Shaikh have received the compensation amount.

5. The learned Advocate appearing for the Petitioners further canvassed that though the land of the Petitioners has been acquired on 07.01.1997, but possession of acquired land was taken by Respondent No.5 on 18.02.1999. Respondent Nos. 2 & 5 failed to use the said land for construction of mini bus-stand till date. However, prior to taking possession of said land, Respondent No. 5 issued a communication dated 26.12.1997 to Respondent No.3 thereby communicating him that, the they do not require more than 60 R of land. Therefore, the Respondent No. 3 sought advise from Respondent No. 4, but no positive steps were taken in that regard. Hence, the Petitioners had filed W. P. No. 7542 of 2010 before this Court, however, the said Petition was dismissed on 25th January, 2011 on the ground of delay and laches. Thereafter, Petitioners also went to the Hon'ble Supreme Court against the Order of this Court in W. P. No. 7542 of 2010, but Hon'ble Supreme Court upheld the Order of dismissal.

6. It is further canvassed on behalf of the Petitioners that, on 10.10.1973, the State Government issued the Government Resolution that, if the acquired land is found to be surplus and/or unutilised or misutilised, or can not be utilised for any public purpose within the stipulated period of three years from the date of taking over the possession, the Collector of the District concerned should take steps for resumption of the land to the Government in accordance with the provisions of the Agreement. On resumption of the land, the Collector should take steps for restoring of such land to the original owners. Therefore, the Petitioners are entitled for restoration of the unutilized land out of their acquired land. So also, as per the provisions of Section 101 of the Act of 2013, any land acquired under this Act remains unutilized for a period of five years from the date of taking over possession, the same shall be returned to the original owners or to their legal heirs.

7. Per contra. Mrs Chetana Rajesh Khirwadkar, the Divisional Controller of MSRTC has filed an affidavit in reply and has strongly resisted the petition. The learned Advocate Shri Bagul, appearing for Respondent Nos. 2 & 5, vehemently canvassed that the land of the Petitioners bearing Gut No. 165 admeasuring 1 H 64 R has been acquired after following the due process of law under the provisions of

the Land Acquisition Act, 1894. The Land Acquisition Officer passed the Award on 07.01.1997 and Petitioner No. 1 Muner Khaja Hussain Shaikh and Petitioner No. 2 Hujur Khaja Hussain Shaikh themselves accepted the compensation on 12.08.1998. Therefore, the petitioners cannot seek restoration of the acquired land. Further, the GR dated 10.10.1973 is not applicable to the facts and circumstances of the present case, so also, once the land has been acquired for the public purpose, the said land cannot be restored.

8. In support of this submission, the learned Advocate for the Respondents MSRTC relied upon the case of **Raghunath Abajirao Shinde (Lt. Co.) & others Vs. State of Maharashtra and others, reported in 2003 (2) Bom. CR 469.**

9. Having regard to the rival submissions of both the sides, we have gone through the record. In the case in hand, a very short question arises for our consideration that, whether the land which has been acquired after following due process of law i.e. Land Acquisition Act, 1894, can be restored to the original land owner, if land remained unutilized, after receiving the compensation amount by the owner of land as per Award passed by the Land acquisition Officer?

10. In the present case, it prima facie appears that, deceased Mr. Khaja Hussain Shaikh Lal was the original owner of the land Gut No. 165 admeasuring 1 H 64 R from village Bembli. It is undisputed that, the Collector, Osmanabad (Now Dharashiv) has received proposal for acquisition of the land. Accordingly the notifications under Sections 4 and 6 of the Land Acquisition Act were published on 11.03.1992 and 02.04.1994 respectively in the Government Gazette. There was publication of notice in local daily newspapers "Rajdharm" and "Kashtakari Lokhit". So also, on 28.11.1992, proclamation was published in the village of the Petitioners. The Land Acquisition Officer passed the award on 07.01.1997 considering the joint measurement of land carried out on 10.03.1992. The Land Acquisition Officer determined the compensation in respect of Petitioners' land to the tune of Rs.79376/-. It is undisputed that Petitioner No. 1 Muner Khaja Hussein Shaikh and Petitioner No. 2 Hujur Khaja Hussein Shaikh, both sons of original land owner have received the compensation determined by the Land Acquisition Officer. Though the Petitioners claimed that, their fathers received the compensation under protest, however, record does not disclose about acceptance of compensation under protest.

11. It is also not in dispute that, on 18.02.1999, a Panchnama was conducted in respect of the land bearing Gut No. 165 and possession

was handed over to MSRTC for construction of mini bus-stand. It is well settled that, merely because some acquired land remained unutilized, it does not create any right in favour of the original land owner.

12. In case of Vishnu Namdeo Kumar & others Vs. State of Maharashtra, reported in 2003(2) Bom. C.R. 200, it has been held that, once acquisition of land is complete in all respects and the land has vested in the State Government free from all encumbrances and the compensation for compulsory acquisition has been made, then expropriated owner ceases to have any right, title or interests in the land. Expropriated owner cannot insist on utilization and user of acquired land and cannot claim its restoration. If the land has not at all been used, the land of the Government should be sold through public auction and not to the expropriated owner.

13. In the case of **Raghunath Abajirao Shinde (Lt. Co.)**, cited *supra*, the Co-ordinate Bench of this Court at the Principal Seat observed in Paragraph Nos. 4 and 5 as under:

"4. The claim also suffers from gross laches and inordinate unexplained delay. As already noted above, the acquisition of the land in question was complete in all respects by the year 1970 and the land vested in the State Government free from all encumbrances by that time and adequate compensation was received by the petitioners. The land was used for Koyna Hydro Electric Project Stage III works for which it was acquired and after the said project was complete in the year 1976, the excess land was transferred to Development

Corporation of Konkan Limited. The petitioners did not raise any grievance at that time or immediately thereafter. In the year 1976-77 itself, out of the land allotted to Development Corporation of Konkan Limited, 57 acres of land was transferred to Parshuram Sahakari Karkhana Limited. No grievance was raised by the petitioners in that regard immediately thereafter. In the year 1984, out of the lands transferred to Parshuram Sahakari Sakhar Karkhana Ltd., 27 acres of land was transferred to Mandar Education Society. Even that action was not challenged immediately thereafter. Writ petition was filed only in the year 1993 and the action of the State Government in transferring the land to Konkan Development Corporation in the year 1976, transferring 57 acres of land by Konkan Development Corporation to Parshuram Sahakari Sakhar Karkhana Ltd. in the year 1976-77 and creation of lease in respect of 27 acres of land by Parshuram Sahakari Sakhar Karkhana Ltd. to Mandar Education Society in 1984 are now sought to be challenged by writ petition filed the year 1993, which cannot and in any case does not deserve to be entertained after such a long lapse of time.

5. Besides that in respect of the Government Resolution dated 10-10-1973 upon which the petitioners claim restoration of the unutilised land, the Division Bench of this Court in (Vishnu Namdeo Kumar & ors. v. State of Maharashtra & ors.)¹, 2003(2) Bom.C.R. (A.B.)200: 2002(4) Mh.L.J. 181 through one of us (Shri R.M. Lodha, J.), it was held that in view of the legal position laid down by the Apex Court, the Government Resolution dated 10-10-1973 cannot be enforced. The Division Bench in Vishnu (supra) considered the judgments of the Apex Court in (Gulam Mustafa v. State of Maharashtra)², A.I.R. 1977 S.C. 448; (State of Kerala & ors. v. M. Bhaskaran Pillai)³, J.T. 1997(6) S.C. 22; (Netal Bag and ors. v. The State of Bengal)⁴, A.I.R. 2000 S.C. 3313; (Municipal Council, Ahmednagar & anr. v. Shah Hyder Beig & ors.)⁵, 2000(2) Bom.C.R. (S.C.)678: A.I.R. 2000 S.C. 671; (Savitri Devi v. State of Haryana & ors.)⁶, A.I.R. 1976 S.C. 729 and (Tulsi Co-operative Housing Society v. State of Andhra

Pradesh)7, A.L.R. 1999 S.C. 3667 and held that an expropriated owner cannot insist on restoration of the land even if the land has not been utilised for the purpose for which it was acquired or for other purpose and if the land has not at all been used, the land of the Government should be sold through public auction and not to the expropriated owner. There appears to be no doubt about the legal position that once the land has been acquired and acquisition has become final, the expropriated owner ceases to have any right, title and interest in the property and pre-existing right, title and interest held by the erstwhile owner ceases to exist and is divested. Once the land is vested in the State free from all encumbrances, obviously such land of the Government if not used for the purposes for which the land was acquired or for any other public purpose or has not at all been used, should be sold through public auction and the expropriated owner cannot have any right to restoration of such land."

14. It would be worthwhile to mention here that, the land of the petitioners was acquired under the provisions of Land Acquisition Act, 1894. The new Act, 2013 came into force w.e.f. 01.01.2014. Section 101 of the Act of 2013 provides as under:

"101. Return of unutilized land:- When any land acquired under this Act remains unutilized for a period of five years from the date of taking over possession, the same shall be returned to the original owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reservation in the manner as may be prescribed by the appropriate Government.

Explanation.- For the purpose of this section "Land Bank" means a Governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilized acquired lands and tax-delinquent properties into into productive use."

15. In case of **Indore Development Authority Vs. Manoharlal and others, (2020) 8 Supreme Court Cases 129**, the Hon'ble Supreme Court held that, once land vests in the State, it cannot be divested even if there is some irregularity in acquisition proceedings. In the case of **V. Chandrasekharan & another Vs. Administrative Officer and others, (2012) 2 Supreme Court Cases 133**, the Hon'ble Supreme Court has held as under:

"Land, once acquired, cannot be restored to the tenure-holders/persons interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. Once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the landowner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to re-convey the land to the person interested nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect."

16. In the case in hand, on scrutiny of the record it appears that, in earlier round of litigation, Shaikh Muner Khaja Hussain Shaikh and others have filed Writ Petition No 7542/2010 before this Court pursuant to the communication dated 26.12.1997 and prayed for issuance of directions against the respondent authorities to release their excess land or in the alternative for issuance of direction to consider their representation. However, on 25.01.2011, the Co-ordinate Bench of this

Court dismissed the said petition. Being aggrieved by the said order, they approached the Hon'ble Supreme Court in appeal, wherein, the order passed by the Co-ordinate Bench of this Court was upheld by the Hon'ble Supreme Court.

17. It seems that, the land of Petitioners is already acquired in the year 1999 in pursuance of the Award dated 07.01.1997 passed by the Land Acquisition Officer and Petitioner Nos. 1 and 2 have already received the compensation amount as per the provisions of Land Acquisition Act, 1894. The title of the acquired land already vested with the State Government long back. Therefore, merely because acquired land remained unutilized, it does not create any right in favour of the Petitioners to seek return of the acquired land without public auction. Accordingly, we answer the question hereinabove in the negative.

18. In view of above circumstances, the present **Writ Petition is dismissed**. No order as to cost.

19. The **Civil Application shall also stand disposed off**.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan