



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

WRIT PETITION NO. 7726 OF 2023

(Prakash s/o Rama Kanhekar and anr Vs. State of Maharashtra and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.T. Harkare, Advocate for petitioners.
Ms. T.H. Khan, AGP for respondent Nos. 1 to 8/State.

CORAM : ANIL S. KILOR & RAJNISH R. VYAS, JJ.

DATED : 14-11-2025.

Heard.

2. The issue involved in the present petition is regarding field Survey Nos. 38/1 and 311C, situated at village Isapur, District Yavatmal which was owned by the petitioners and acquired by the respondents for public purpose i.e. for National Fish Seed Farm. Admittedly, the compensation towards acquisition was paid to the petitioners in the year 1994 and name of respondent No. 2 was mutated in 7/12 extracts. There is no dispute that the land was used for public purpose for which it was acquired i.e. for National Fish Seed Farm by the acquiring body. However, after suffering losses, it was decided by the respondent No. 1 to lease out the land for the same purpose for which the land was acquired and accordingly, such Government Resolution was passed on 18.1.2014. In view of the same, a Lease Deed was executed between respondent No. 2 Commissioner and respondent No. 9 a company on 6.12.2017.

3. In the aforesaid backdrop, the Government Resolution dated 18.1.2014 is under challenge on the ground that the acquisition was a fraud for a reason that after acquiring the land of the petitioners for public purpose, it was now leased out to the private party.

4. In support of the contentions, heavy reliance has been placed by learned counsel for the petitioners on the judgment of the Hon'ble Supreme Court of India in case of ***Royal Orchid Hotels Limited and anr Vs. G. Jayarama Reddy and Ors***, reported in **(2010)10 SCC 608**. The learned counsel while relying upon the said judgment, more particularly, relied upon paragraphs 36 to 39 which read thus:

"36. The next question which merits examination is whether the High Court was justified in directing restoration of land to respondent No.1. In [Mrs. Behroze Ramyar Batha and others v. Special Land Acquisition Officer](#) (supra), the Division Bench of the High Court categorically held that the exercise undertaken for the acquisition of land was vitiated due to fraud. The Division Bench was also of the view that the acquisition cannot be valid in part and invalid in other parts, but did not nullify all the transfers on the premise that other writ petitions and a writ appeal involving challenge to the acquisition proceedings were pending. In [Annaiah and others v. State of Karnataka and others](#) (supra), the same Division Bench specifically adverted to the issue of diversification of purpose and held that where the landowners are deprived of their land under the cover of public purpose and there is diversification of land for a private purpose, it amounts to fraudulent exercise of the power of eminent domain.

37. The pleadings and documents filed by the parties in these cases clearly show that the Corporation had made a false projection to the State Government that land was needed for execution of tourism related projects. In the meeting of officers held on 13.1.1987, i.e. after almost four years of the issue of declaration under [Section 6](#), the Managing Director of the Corporation candidly admitted that the Corporation did not have the requisite finances to pay for the acquisition of land and that Dayananda Pai, who had already entered into agreements with some of the landowners for purchase of land, was prepared to provide funds subject to certain conditions including transfer of 12 acres 34 guntas land to him for house building project. After 8 months, the Corporation passed resolution for transfer of over 12 acres land to Dayananda Pai. The Corporation also transferred two other parcels of land in favour of Bangalore International Centre and M/s. Universal Resorts Limited. These transactions reveal the true design of the officers of the Corporation, who first succeeded in persuading the State Government to acquire huge chunk of land for a public purpose and then transferred major portion of the acquired land to private individual and corporate entities by citing poor financial health of the Corporation as the cause for doing so.

38. The Courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire

land of the private persons but this proposition cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the company is bound to comply with the mandate of the provisions contained in [Part VII of the Act](#). Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass the provisions of Part VII. The diversification of the purpose for which land was acquired under [Section 4\(1\)](#) read with [Section 6](#) clearly amounted to a fraud on the power of eminent domain. This is precisely what the High Court has held in the judgment under appeal and we do not find any valid ground to interfere with the same more so because in [Annaiah and others v. State of Karnataka and others](#) (supra), the High Court had quashed the notifications issued under [Sections 4\(1\)](#) and [6](#) in their entirety and that judgment has become final.

39. The judgment in [Om Parkash v. Union of India](#) (supra) on which reliance has been placed by Shri Naganand is clearly distinguishable. What has been held in [that case](#) is that quashing of the acquisition proceedings would enure to the benefit of only those who had approached the Court within reasonable time and not to those who remained silent. In this case, respondent No.1 independently questioned the acquisition proceedings and transfer of the acquired land to M/s. Universal Resorts Ltd. In other words, he approached the High Court for vindication of his right and succeeded in convincing the Division Bench that the action taken by the Corporation to transfer his land to M/s. Universal Resorts Limited was wholly illegal, arbitrary and unjustified.

The above referred observations made by the Hon'ble Supreme Court of India, in light of peculiar facts of the said case wherein land was acquired for public purpose of Municipal Corporation and subsequently, it was transferred to private party by citing a reason that the Corporation does not have money to acquire the land or to pay compensation. In the facts and circumstances of the said case, the Court held said transfer of land which was acquired for public purpose, to the private entity, on the pretext that the Corporation does not have sufficient funds to pay compensation, amounts to fraudulent act on behalf of the Corporation. In the said backdrop, the Hon'ble Supreme Court of India has held that the Corporation did not have jurisdiction to transfer the land acquired for

the public purpose to the company and thereby allowed them to diversify the land for the purpose for which the land was not acquired and therefore, it clearly amount to fraudulent act.

5. However, it is not the case of the petitioners that the purpose for which now the land has been leased out to private entity is different than the purpose for which land was acquired. It is to be noted that after acquisition of the land, the Government used the same for the purpose for which it was acquired i.e. National Fish Seed Farm and after suffering loss, decided to lease it out for the same public purpose to private entity.

6. In the case in hand, the amount of compensation was paid long back to the petitioners and even the purpose is also not changed while leasing out the land to respondent No. 9. In that view of the matter, we are of the opinion that the judgment in the case of ***Royal Orchid Hotels Limited and anr Vs. G. Jayarama Reddy and Ors***, (supra) will not apply to the present case.

Except the challenge on the above referred ground to the Government Resolution dated 18.1.2014, no other prayer has been made by the petitioners. In that view of the matter, as there is no merit in the petition, the petition is dismissed.

(RAJNISH R. VYAS, J)

(ANIL S. KILOR, J)