

*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

+ Writ Appeal No.643 of 2022

% 09.01.2023

Between:

A.Jeeth Rao (died) & others

Appellants

Vs.

The State of Telangana,
Rep by its Principal Secretary,
Municipal Administration Department,
Secretariat, Hyderabad & others.

Respondents

! Counsel for Appellants : Mr. Vedula Venkata Ramana

^ Counsel for

Respondent Nos.1 & 6 : Mr. Parsa Ananth Nageswar Rao

Counsel for Respondent No. 3 : Mr.Y.Rama Rao

Counsel for Respondent No. 7 : Mr.G.Vidya Sagar

Counsel for

Respondent Nos.8 & 9 :Polkampally Pavan Kumar Rao

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> HEAD NOTE:

? Cases referred

- 1 AIR 1957 SC 344
- 2 (1976) 1 SCC 800
- 3 (2010) 8 SCC 467
- 4 (2010) 13 SCC 158
- 5 (2003) 1 SCC 335
- 6 (2020) 8 SCC 129
- 7 (2020) 8 SCC 129
- 8 (2014) 3 SCC 183
- 9 (2016) 6 SCC 387

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AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

Writ Appeal No.643 of 2022

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Vedula Venkatramana, learned Senior Counsel for the appellants; Mr.Parsa Ananth Nageswar Rao, learned Special Government Pleader attached to the Office of learned Advocate General for Municipal Administration representing respondent Nos.1 and 6; learned standing counsel for Greater Hyderabad Municipal Corporation representing respondent Nos.2, 4 & 5; Mr.Y.Rama Rao, learned standing counsel for Hyderabad Metropolitan Development Authority representing respondent No.3; Mr.G.Vidya Sagar, learned Senior Counsel representing respondent No.7; and Mr. Polkampally Pavan Kumar Rao, learned counsel for respondent Nos.8 & 9.

2. This appeal is directed against the order dated 28.07.2022 passed by the learned Single Judge dismissing

the writ petition being W.P.No.976 of 2020 filed by the appellants as the writ petitioners.

3. Appellants had filed the related writ petition for a direction to the State to re-convey the lands to an extent of Acs.34 – 17 gts in Sy.Nos.1011/1 and 1011/2 situated at Kukatpally Revenue Village in Kukatpally Mandal, Medchal – Malkajgiri District (subject land) in favour of the petitioners.

4. From the materials on record, it appears that the subject land was acquired by the State Government in the year 1966 under the Land Acquisition Act, 1894 for the purpose of allotment in favour of Indian Detonators Limited. Predecessors of the petitioners were the owners of the subject land which was acquired by the State. After acquisition, the land was kept vacant for a long time. It was alleged that Indian Detonators Limited has entered into a development agreement with Gulf Oil Corporation Limited (Respondent No.7), who in turn has entered into a further development agreement with Hinduja Estates

Private Limited (Respondent No.8) on 30.07.2012 for real estate business.

5. According to the petitioners, the land was acquired for a public purpose i.e., for industrial use but now the acquired land is being used for commercial purpose. The purpose for which the land was acquired has been changed. Therefore, petitioners submitted representation dated 21.10.2019 before the GHMC authorities seeking survey and demarcation of the acquired land and thereafter to re-convey the subject land to the petitioners. This was followed by legal notice dated 18.11.2019 and reminder dated 28.12.2019. With the grievance that no corrective steps were taken on the basis of the above representations, related writ petition came to be filed.

6. While learned counsel for the appellants had contended before the learned Single Judge that the acquired land was being utilized for a purpose which was different from the public purpose for which the acquisition was made, learned Government Pleader for Revenue had submitted before the learned Single Judge that once a

property is acquired, question of re-conveying the same does not arise.

7. After hearing learned counsel for the parties and on due consideration, learned Single Judge passed the order dated 28.07.2022 taking the view that relief sought for by the petitioners cannot be granted. Disposing of the writ petition, liberty has been granted to the appellants to avail appropriate remedy if any.

8. Hence the appeal.

9. Learned Senior Counsel for the appellants submit that on 28.09.2022, this Court had issued notice and directed maintenance of *status quo* in respect of the subject land. Once notice has been issued, State should file affidavit. Elaborating further, he submits that the purpose for which the land was acquired has to be maintained; it must be in the public interest. Ofcourse once acquired, the land can be utilized for B public interest instead of A public interest but it cannot be used for a private cause like constructing commercial complexes or constructing villas.

His further submission is that though the land was acquired under the Land Acquisition Act, 1894, Section 103 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (briefly 'the 2013 Act' herein) provides that provisions of the 2013 Act would be in addition to and not in derogation of the Land Acquisition Act, 1894.

9.1. Section 101 of the 2013 Act provides for return of unutilized land, in case the acquired land is not utilized during a particular period, for the purpose for which it was acquired. Such a provision was absent in the Land Acquisition Act, 1894. He therefore submits that on a conjoint reading of the Land Acquisition Act, 1894 and the 2013 Act, since it is evident that the subject land is being utilized not for public purpose but for commercial purpose, which was not the object of land acquisition, the same should be resumed by the State and retained in the 'Land Bank' of the State.

10. Mr. Parsa Ananth Nageshwar Rao, learned Special Government Pleader representing respondent Nos.1

and 6 submits that respondent No.6 has filed counter affidavit objecting to the contention of the appellants. He submits that learned Single Judge was fully justified in dismissing the writ petition.

10.1. He has referred to the decision of the Supreme Court in the cases of ***Fruit & Vegetable Merchants Union Vs. Delhi Improvement Trust***¹, ***Gulam Mustafa Vs. State of Maharashtra***², ***Sulochana Chandrakant Galande Vs. Pune Municipal Transport***³ and ***Om Prakash Verma Vs. State of Andhra Pradesh***⁴ and contends that once a land is acquired, it vests entirely with the State free from all encumbrances. Thereafter it is not open to the land owners to contend that post acquisition, the land has to be utilized in a particular manner.

11. Mr.G.Vidya Sagar, learned Senior Counsel appearing for respondent No.7 submits that the writ petition has been filed after 54 years of land acquisition. Such a writ petition cannot be entertained at all. In

¹ AIR 1957 SC 344

² (1976) 1 SCC 800

³ (2010) 8 SCC 467

⁴ (2010) 13 SCC 158

support of his contention, he has placed reliance on a decision of the Supreme Court in ***Northern Indian Glass Industries Vs. Jaswant Singh***⁵. His further contention is that in the instant case, subject land was acquired under the Land Acquisition Act, 1894, when the 2013 Act was not even visualized or conceptualized. There cannot be application of the provisions of the 2013 Act, in the present case, to support resumption of the acquired land. Referring to the Constitution Bench judgment of the Supreme Court in the case of ***Indore Development Authority Vs. Manoharlal***⁶, more particularly to paragraph Nos.363 and 364, learned Senior Counsel submits that Section 101 of the 2013 Act cannot be made applicable to an acquisition made under the Land Acquisition Act, 1894.

11.1. However on facts, denying the allegation of the appellants, he would assert that the acquired land was utilized by respondent No.7 for industrial purpose in respect of which he has requisite documents to prove prior to entering into development agreement.

⁵ (2003) 1 SCC 335

⁶ (2020) 8 SCC 129

11.2. Further, from the cause title, learned Senior Counsel has pointed out that appellant Nos.1, 5 and 6 are no more alive, yet they have been presented before the Court as surviving and contesting appellants. His submission is that the writ petition as well as the writ appeal are not bonafide and therefore the writ appeal should be dismissed.

12. Learned counsel representing the other respondents has supported the contentions advanced on behalf of the State as well as on behalf of respondent No.7.

13. Submissions made by learned counsel for the parties have received the due consideration of the Court.

14. The subject land was acquired under the Land Acquisition Act, 1894, in 1966. The land was acquired by the State for the purpose of utilization thereof by Indian Detonators Limited. According to the appellants, the acquired land was not utilized by Indian Detonators Limited for a long time. Subsequently, Indian Detonators

Limited entered into development agreement with Gulf Oil Corporation Limited, who inturn entered into a further development agreement with Hinduja Estates Private Limited on 30.07.2012 for real estate business.

14.1. Appellants filed representations on 21.10.2019, 18.11.2019 and 28.12.2019 contending that the acquired land was not being utilized for the purpose for which it was acquired. Therefore, the land should be resumed and returned back to the appellants.

15. This has been denied by Mr. G.Vidya Sagar, learned Senior Counsel for respondent No.7. According to him, the acquired land was utilized by respondent No.7 for industrial purpose i.e., for the purpose for which the land was acquired. Much much later the development agreements were entered into.

16. In the course of the hearing, learned counsel for the parties have submitted that land acquisition proceedings were completed in the year 1966 and the land owners were duly compensated under the Land Acquisition

Act, 1894. The subject land thereafter vested with the State Government whereafter it was handed over to respondent No.7.

17. In ***Fruit & Vegetable Merchants*** (supra) Supreme Court examined the meaning of the word 'vesting' in the context of Sections 16 and 17 of the Land Acquisition Act, 1894. It was held therein that the property acquired becomes the property of the Government without any conditions or limitations. 'Encumbrance' actually means the burden caused by an act or omission of a man and not that created by nature. It means a burden or charge upon the 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.

17.1. The expression 'free from all encumbrances' appearing in Section 16 of the Land Acquisition Act, 1894 would mean wholly unqualified and would encompass extinguishing of 'all rights, title and interests including easementary rights'. Thus, 'free from all encumbrances'

means vesting of land in the State without any charge or burden in it. State has absolute title or ownership over it.

18. Again in ***Gulam Mustafa*** (supra) Supreme Court held that once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is of no concern to the original owner and cannot be the basis for invalidating the acquisition.

19. Supreme Court in ***Sulochana Chandrakant Galande*** (supra), reiterated the above decision holding that it is the 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. Summing up the law, Supreme Court held 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 any 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. Person

interested cannot claim right of restoration of land on any ground, whatsoever.

20. On the question of delay, Supreme Court in ***Northern Indian Glass Industries*** (supra) set aside the order of the High Court entertaining the writ petition seventeen years after finalization of the acquisition proceedings. In that case, the writ petition was entertained on the ground that full enhanced compensation amount was not paid to the land owners. Supreme Court opined that merely because full enhanced compensation amount was not paid to the land owners, that itself was not a ground to condone the delay and laches in filing the writ petition. It was held that High Court was not justified in ordering restoration of land on the ground that land acquired was not used for which it had been acquired. Reiterating the settled principle, Supreme Court held that after passing of award and taking overall possession under Section 16 of the Land Acquisition Act, 1894, the acquired land vests with the Government free from all encumbrances. Even if the land is not utilized for the

purpose for which it is acquired, the land owner does not get any right to ask for revesting the land in him and to ask for restitution of possession.

21. A Constitution Bench of the Supreme Court in ***Indore Development Authority Vs. Manoharlal***⁷ was examining legality of Section 24 of the 2013 Act in the context of divergence of views expressed in ***Pune Municipal Corporation Vs. Harakchand Misirimal Solanki***⁸ and ***Yogesh Neema Vs. State of Madhya Pradesh***⁹. In the above context and considering the provision for return of unutilized land under Section 101 of the 2013 Act, Constitution Bench of the Supreme Court emphatically held that Section 101 of the 2013 Act cannot be said to be applicable to an acquisition made under the Land Acquisition Act, 1894.

22. Thus, on a thorough consideration of all relevant aspects of the matter, we are of the unhesitant view that both the writ petition as well as the writ appeal are wholly

⁷ (2020) 8 SCC 129

⁸ (2014) 3 SCC 183

⁹ (2016) 6 SCC 387

devoid of any merit. There is no question of the appellants availing appropriate remedy as observed by the learned Single Judge.

23. Writ Appeal is accordingly dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

09.01.2023
MRM