Pimpri Chinchwad New Township ... vs Vishnudev Cooperative Housing Society on 3 August, 2018

Equivalent citations: AIR 2018 SUPREME COURT 3656, (2018) 4 PAT LJR 15, (2018) 2 WLC(SC)CVL 362, (2019) 3 MAH LJ 562, (2018) 3 RECCIVR 997, (2018) 7 MAD LJ 109, (2018) 9 SCALE 403, (2018) 3 JLJR 426, (2019) 1 ALLMR 930 (SC), (2018) 5 ANDHLD 140, (2018) 189 ALLINDCAS 99 (SC), (2018) 3 CURCC 374, (2018) 130 ALL LR 719, (2018) 5 ALL WC 4703, (2018) 4 JCR 88 (SC), 2018 (8) SCC 215, AIRONLINE 2018 SC 72

Author: Abhay Manohar Sapre

Bench: Uday Umesh Lalit, Abhay Manohar Sapre

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7649 OF 2018
[Arising out of SLP (C) No.20188 of 2017]

Pimpri Chinchwad New Township
Development Authority .. Appellant(s)

Versus

Vishnudev Cooperative Housing
Society & Ors. .. Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) Leave granted.

2) This appeal is filed against the final judgment

Court of Judicature at Bombay in Writ Petition 13:25:40 IST Reason:

No.5783 of 2006 whereby the High Court allowed the petition filed by respondent No.1 herein and directed the State Government to issue notification in the official gazette for release of the acquired land from acquisition on the basis of the Revenue Minister's order dated 10.06.2004 passed under Section 48 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act").

3) In order to appreciate the issues involved in the appeal, it is necessary to set out the factual background of the case in detail. The facts mentioned hereinbelow are taken from the SLP paper books and its List of Dates.

4) Survey No. (Gat. No.210 □ measuring around H 23 R□Total land 40 H 49 R) situated at Mauje Wakad, Tehsil Mulshi, District Pune (Maharashtra) was originally owned by the members of one "Deo"

family.

5) On 12.03.1970, the State Government acquired this land by issuing a notification under Section 4 of the Act. It was followed by publication of declaration under Section 6 of the Act. The acquisition was for a public purpose, namely, "planned development and utilization of lands in Pimpri Chinchwad Township Area for industrial, commercial and residential purposes". The development project for which the land was acquired was to be executed through Pimpri Chinchwad New Township Development Authority (for short, called "PCNTDA ") □appellant herein.

6) The Special Land Acquisition Officer (for short, called "SLAO") then initiated the proceedings under Section 11 of the Act for determination of the compensation payable to the landowners and accordingly passed an award dated 23.09.1986. The SLAO then issued notices to the landowners as required under Section 12 (2) of the Act. Since the landowners did not accept the compensation, the entire amount of compensation was deposited by the SLAO in Revenue Deposit Account of Treasury.

7) The members of "Deo family" (landowners) felt aggrieved by the award dated 23.09.1986 and filed writ petition being W.P. No. 3719/1987 in the High Court at Bombay. This writ petition was dismissed by the High Court by order dated 18.07.1989. The writ petitioners felt aggrieved by the dismissal of their writ petition filed review

petition (R.P. No. 3751/1989) before the High Court, which was also dismissed as withdrawn on 08.09.1989. Aggrieved by the dismissal of the writ petition and the review petition, the landowners filed SLP (c) No.12889/1989 in this Court. It was also dismissed as withdrawn on 27.11.1989.

8) In the meantime, on 19.09.1989, the members of "Deo Family" filed an application under Section 48(1) of the Act to the Revenue Minister of the State of Maharashtra and prayed therein for release of their acquired land. During pendency of this application, the landowners filed writ petition (No.36/1990) in the High Court and prayed therein for a direction to the State for deciding their application. By order dated 12.01.1990, the High Court disposed of the writ petition and directed the State to decide the landowners' application in accordance with law.

9) By order dated 07.07.1992, the State Government partly allowed the landowners' application and while releasing the land measuring 29 H 98 R retained the remaining land measuring 10 H 51 R for execution of the development project for which the entire land had been acquired. The details of the land retained and released are mentioned hereinbelow:

Survey No.	Area covered under SLAO H:R	Area deleted from acquisition H:R	Area remained under acquisition to be given to PCNTDA
210	39 H 26 R	28 H 93 R	10 H 33 R
211	1 H 23 R	1 H 5 R	0 H 18 R
Total	40 H 49 R	29 H 98 R	10 H 51 R

10) It appears from the record of the proceedings that after the dismissal of the review petition, the landowners (members of "Deo family") transferred the acquired land in question to the members of one Co□ operative Housing Society called, "Vishnudev Co□ operative Housing Society" (for short called "VCHS")□ respondent No.1 herein on or about 25.10.1993.

11) Respondent No.1 (VCHS) claiming to be the owner of the land in question felt aggrieved and filed writ petition (1116/1993) questioning therein the legality of the order of the State dated 07.07.1992 to the extent it declined to release the remaining land measuring 10 H 51 R. The High Court, by order dated 23.03.1993, dismissed the writ petition and upheld the order of the State. Respondent No.1 (VCHS) carried the matter in this Court by filing SLP (C) No.10056/1993. By

order dated 26.11.1993, this Court dismissed the SLP. The Divisional Commissioner then passed a final order dated 20.08.1994 under Section 48 (1) of the Act directing therein for deletion of 29 H 98 R from Survey No. 210 and retaining of 10 H 33 R as acquired land for completion of development project. This is how, out of total acquired land, the land measuring 29 H 98 R was released in favour of landowners from the acquisition proceedings and the land measuring 10 H 33 R was retained to enable the State to execute the development project on the said land through the agency of the appellant.

12) Notwithstanding the termination of two rounds of litigation up to this Court, the landowners☐ VCHS again started third round and filed fresh writ petition (3200/1994) in the High Court and this time prayed therein for deletion of 10 H 55 R from Survey No. 210/1. By order dated 07.09.1994, the High Court dismissed the writ petition. Again the said order, the VCHS filed SLP (C) No.22907/1994 in this Court and the same was dismissed by order dated 10.02.1995.

13) On 30.05.2000, the SLAO took possession of the land bearing Gat. No. 210 (10 H 33 R) and executed panchanama in support thereof. The name of the State Government was accordingly entered in the revenue records at Mutation Entry No. 8212(File No. 7/12) on 21.07.2000. The State Government then handed over the possession of the land in question to PCNTDA on 08.11.2005 to enable them to start the work on the land. It was followed by entry of name of PCNTDA in the revenue records on 19.11.2005.

14) Despite losing the battle in the first, second and third round of litigation, as detailed above, VCHS again renewed their efforts and filed an application under Section 48 (1) of the Act to the Revenue Minister of the State of Maharashtra to start another round of litigation on 20.01.2004. The Revenue Minister on 10.06.2004, however, noted in the file that the land in question be deleted from the acquisition proceedings.

15) It is pertinent to mention here that when the order dated 10.06.2004 was passed, the Code of Conduct was in force in the State of Maharashtra as the assembly elections were to be held in September 2004 in the State of Maharashtra. It is also pertinent to mention that the order of the Revenue Minister ordering deletion of the land was never communicated to the landowners. On 04.11.2004, the State Government directed that all the matters where the orders were not communicated to the parties concerned be placed for fresh consideration for passing appropriate orders. The present being a case where the order was not communicated to the landowners, the new Revenue Minister, who took over the charge from the earlier Minister, directed that the matter relating to the land in question be considered afresh. The VCHS then wrote a letter to the State Government on 06.06.2006

insisting therein for issuance and implementation of the order dated 10.06.2004 passed by the then Revenue Minister but since the Government did not yield to the VCHS insistence, a writ petition (5783/2006) was filed by VCHS on 21.06.2006 in the High Court praying for issuance of mandamus directing the State Government to give effect to the order dated 10.06.2004 passed by the then Revenue Minister and issue appropriate notification in that behalf by releasing the remaining land measuring 10 H 55 R.

16) In this writ petition, the VCHS arrayed only the State Government as party respondent but did not implead PCNTDA (appellant herein). The PCNTDA then filed an application for intervention in the said writ petition which was allowed by directing the VCHS to implead PCNTDA as party respondent in the writ petition.

17) The State and PCNTDA contested the writ petition inter alia on the ground that firstly, the writ petition is not maintainable inasmuch as the entire issue in relation to the land in question has already attained finality thrice in favour of the State, therefore, nothing now remains for further adjudication; Secondly, since possession of the land in question has already been taken over by the State long back on 30.05.2000, the provisions of Section 48 of the Act were not applicable to the case and nor Section 48 could be used for further release of the land from acquisition; and lastly, the so□called order dated 10.06.2004 passed by the then Revenue Minister was not an order much less a legal one and more so when it was not communicated to the landowners, it did not create any kind of right in favour of the landowners.

18) By impugned order, the High Court allowed the landowners' writ petition and issued a mandamus directing the State to give effect to the order dated 10.06.2004 passed by the then Revenue Minister. The effect of issuance of mandamus is to release the remaining land measuring 10 H 33 R from the acquisition proceedings in favour of the landowners. It is against this order, PCNTDA filed this appeal by way of special leave in this Court.

19) The question, which arises for consideration in this appeal, is whether the High Court was justified in allowing the writ petition filed by the landowners (VCHS□respondent No.1 herein) and, in consequence, was justified in issuing directions to the State in relation to the land in question.

20) Heard Mr. Arvind Datar, learned senior counsel for the appellant, Ms. Meenakshi Arora, learned senior counsel for respondent No.1 and Mr. Nishant R. Katneshwarkar, learned counsel for respondent Nos. 2 & 3.

21) Mr. Arvind Datar, learned senior counsel appearing for the appellant (PCNTDA) while assailing the legality and correctness of the

impugned order has mainly urged six points.

22) In the first place, learned counsel urged that the reasoning and the conclusion arrived at by the High Court in allowing the landowners' writ petition is, on the face of it, legally unsustainable and being wholly perverse deserves to be set aside.

23) In the second place, learned counsel urged that an issue as to whether the land in question was capable of being released or not from the clutches of the acquisition proceedings in the context of Section 48 (1) of the Act had attained finality in the earlier rounds of litigation against the landowners up to this Court, the same could not have been again agitated by filing another application by respondent No.1(landowners) under Section 48 of the Act.

24) According to learned counsel, it was not legally permissible to empower the then Revenue Minister to entertain such application.

25) In the third place, learned counsel contended that when the State had admittedly taken possession of the land in question long back on 30.05.2000 strictly in accordance with law as laid down by this Court in Balwant Narayan Bhagde vs. M.D. Bhagwat & Ors. (1976) 1 SCC 700, the provisions of Section 48 of the Act had no application to the facts of the case at hand and neither the then Revenue Minister nor the State had any power to invoke the provisions of Section 48 of the Act to release any part of the land on or after 30.05.2000.

26) In the fourth place, learned counsel contended that the then Revenue Minister, who passed the order dated 10.06.2004 had no power to entertain any such application because admittedly during the relevant time, due to announcement of date of the State Assembly elections (September 2004), the Code of Conduct had come in force which did not permit any Minister to exercise such power.

27) In the fifth place, learned counsel contended that even otherwise, the so called noting made by the then Revenue Minister in the file on 10.06.2004 directing release of the land in question from the acquisition proceedings could never be construed as an "order" within the meaning of Section 48 of the Act and nor such noting had any attribute of a legal order.

28) It was his submission that firstly, such noting remained only a noting of the then Revenue Minister, which was never communicated to the landowners as per the procedure prescribed and secondly, before it could take the shape of an order within the meaning of Section 48 of the Act for being giving effect to, the noting was ordered to be considered afresh by the State Government by order dated 04.11.2004.

29) In this way, according to learned counsel, the so called noting never saw the light of the day and died its own death in the files creating no right and interest of any kind in favour of the landowners.

30) In the fifth place, learned counsel contended that the then Revenue Minister had passed similar orders alike the one in question in relation to other survey numbers by directing release of the land from the clutches of the acquisition proceedings but all such orders were quashed by the High Court in the writ petition and those orders were also upheld by this Court. Learned counsel gave the list of the cases.

31) In the sixth place, learned counsel contended that while releasing part of the land vide order dated 20.08.1994 (Annexure P-24) it was made clear to the landowners that they would not be entitled to claim any compensation for the said land. It was, therefore, urged that reading of the order dated 20.08.1994 would clearly indicate that the releasing of the part of the land and retaining of the remaining land was in the nature of a bargain between the State and the landowners and, therefore, there did not arise any occasion to further release of the remaining land in question which was undoubtedly needed for accomplishing the public purpose for which it was acquired.

32) In other words, the submission was that release of part of the land vide order dated 20.08.1994 disentitled the landowners to claim further release of the remaining land from acquisition proceedings. It is apart from the fact that the release of the land due to obtaining its possession under Section 16 was not possible under Section 48 of the Act.

33) It is essentially these submissions, learned counsel elaborated in his arguments by referring to the record of the case and the decisions of this Court.

34) In reply, Ms. Meenakshi Arora, learned senior counsel supported the impugned order including its reasoning. It was her submission that the impugned order is based on proper reasoning and hence it does not call for any interference. Learned counsel elaborated her submission by referring to the documents to support the reasoning of the High Court.

35) Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions of the learned senior counsel for the appellant.

36) The main questions which arise for consideration in this appeal are first, whether the then Revenue Minister, who was purporting to act for and on behalf of the State, had the power, in the background facts of this case, to invoke

the provisions of Section 48 of the Act for release of the acquired land in question from the acquisition proceedings; Second, whether the State had taken possession of the acquired land in question on 30.05.2000 and, if so, its effect; and lastly, what is the true nature of the order dated 10.06.2004.

37) Sections 16 and 48, which are relevant for this case read as under:

> "Section 16
>
> 16. Power to take possession□ When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Section 48

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed□(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of nay proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

38) Section 48 of the Act gives liberty to the State to withdraw from the acquisition of any land "of which possession has not been taken" except in the cases which fall in Section 36. In other words, once the possession of the acquired land is taken, the State has no power to withdraw from the acquisition because as a result of taking over of the possession, the acquired land vests with the State absolutely free from all encumbrances.

39) A fortiori so long as the possession is not taken of the acquired land, the State is at liberty to withdraw from the acquisition either partly or fully depending upon the facts of each case.

40) Section 16 of the Act empowers the Collector to take possession of the acquired land on passing of an award under Section 11 of the Act. Once the Collector takes possession, the acquired land vests absolutely in the Government free from all encumbrances as provided therein.

41) The question arose before a Bench of three Judges of this Court in Balwant Narayan Bhagde (supra) as to how and in what manner possession of the acquired land is required to be taken as provided under Section 16 of the Act. The majority view speaking through Bhagwati J. (as His Lordship then was) dealt with this issue succinctly in Para 28 thus:

> "28.....We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking "symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

42) Keeping in view the law laid down in Balwant Narayan Bhagde (supra), we proceed to examine the question as to whether the possession of the remaining acquired land was taken by the State

and, if so, whether it was done in accordance with the test laid down by this Court.

43) Having perused the Panchanama (Annexure-P-

4) dated 30.05.2004, Mutation Entry No. 8212 (file 7/12) (Annexure-P-5), possession receipt (Annexure-P-12) and Mutation Entry of PCNTDA (Annexure-P-28/29) relied upon by the State, we have no hesitation in holding that the State did take possession of the acquired land in question on 30.05.2000 as per the test laid down by this Court in Balwant Narayan Bhagde (supra). This we say for the following reasons.

44) First, the State gave notice to all the co-owners of the land in question and informed them to remain present at the time of taking possession by the SLAO; Second, out of all the co-owners, two, namely, Chandra Kant Gajanan Dev and Bhalchandra Chintaman Dev were present at the time of taking possession. It was sufficient compliance; Third, possession was taken in the presence of two witnesses by the SLAO; Fourth, panchanama evidencing taking of the possession was duly signed by the witnesses; Fifth, the name of the State Government was duly entered in the revenue records after obtaining possession as an owner; Sixth, the Government, in turn, handed over the possession of the land to the appellant (PCNTDA); and Seventh, the name of PCNTDA was also entered in the revenue records of the land in question.

45) Once we hold that the possession of the land in question was taken by the State in accordance with law on 30.05.2004 from the landowners, we have no hesitation in holding that the provisions of Section 48 of the Act were not applicable to the case at hand. In other words, once it is held that the possession of the acquired land was with the State, the land stood vested in the State disentitling the State to release the land from the acquisition proceedings by taking recourse to the provisions of Section 48 of the Act.

46) A fortiori, the then Revenue Minister had no power to deal with the land in question in any manner whatsoever and nor had any power to invoke the provisions of Section 48 of the Act for release of the land in question from the clutches of the acquisition proceedings.

47) This takes us to examine another question though in the light of our finding on the issue of possession, it is not necessary for us to examine this question in detail.

48) The question is whether the order dated 10.06.2004 passed by the then Revenue Minister directing release of the acquired land in question has the attributes of an order within the meaning of Section 48 of the Act or, in other words, whether the order in question created any right in favour of the landowners so as to enable them to claim mandamus for enforcement of such order against the State

49) Our answer to the question is "no". It is for the reasons that First, a mere noting in the official files of the Government while dealing with any matter pertaining to any person is essentially an internal matter of the Government and carries with it no legal sanctity; Second, once the decision on such issue is taken and approved by the competent authority empowered by the Government in that behalf, it is required to be communicated to the person concerned by the State Government.

50) In other words, so long as the decision based on such internal deliberation is not approved and communicated by the competent authority as per the procedure prescribed in that behalf to the person concerned, such noting does not create any right in favour of the person concerned nor it partake the nature of any legal order so as to enable the person concerned to claim any benefit of any such internal deliberation. Such noting(s) or/and deliberation(s) are always capable of being changed or/and amended or/and withdrawn by the competent authority.

51) Third, though Section 48 of the Act, in terms, does not provide that release of the land from any acquisition proceedings is required to be done by issuance of the notification by the State but, in our view, having regard to the scheme of the Act, which begins with the process of issuance of notification under Section 4 of the Act for acquisition of any land, the release of land from such acquisition is complete only when a notification is issued by the State in that behalf.

52) Indeed, the aforementioned issue remains no more res integra and was decided by this Court in several decisions, such as State of Punjab vs. Sodhi Sukhdev Singh, AIR 1961 SC 493, State of Bihar vs. Kripalu Shankar, (1987) 3 SCC 34, Rajasthan Housing Board vs. Shri Krishan, (1993) 2 SCC 84, Sethi Auto Service Station vs. DDA, (2009) 1 SCC 180 and Shanti Sports Club & Anr. Vs. Union of India & Ors., (2009) 15 SCC 705.

53) In Shanti Sports (supra) a Bench of two Judges of this Court, speaking through Singhvi, J., took note of all the previous case law on the subject noted above and held as under:

> "37 ..... Although, the plain language of Section 48(1) does not give any indication of the manner or mode in which the power/discretion to withdraw from the acquisition of any land is required to be exercised, having regard to the scheme of Parts II and VII of the 1894 Act, which postulates publication of notification under Section 4(1), declaration under Section 6 and agreement under Section 42 in the Official Gazette as a condition for valid acquisition of the land for any public purpose or for a company, it is reasonable to take the view that withdrawal from the acquisition, which may adversely affect the public purpose for which, or the company on whose behalf the

acquisition is proposed, can be done only by issuing a notification in the Official Gazette.

39. The requirement of issuing a notification for exercise of power under Section 48(1) of the Act to withdraw from the acquisition of the land can also be inferred from the judgments of this Court in Municipal Committee, Bhatinda v. Land Acquisition Collector and others (1993) 3 SCC 24 , U.P. State Sugar Corporation Ltd. v. State of U.P. and others (1995) Supp 3 SCC 538, State of Maharashtra and another v. Umashankar Rajabhau and others (1996) 1 SCC 299 and State of T.N. and others v. L. Krishnan and others (1996) 7 SCC 450.

43. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review."

54) In the light of the foregoing discussion, we are of the considered opinion that the then Revenue Minister, who passed the order dated 10.06.2004 had no power to deal with the matter relating to release of the land in question. He simply usurped the power under Section 48 of the Act, which he never possessed. It was an abuse of exercise of power by him while dealing with the State's largesse.

55) That apart, in our view, the filing of the writ petition by the landowners itself was an abuse of judicial process. It was for the simple reason that the earlier litigation, which travelled up to this Court thrice having ended against the landowners, it was binding on the parties. It prevented the landowners to again raise the same issue.

56) Indeed, the release of part of the land in landowners' favour and retention of the remaining land for accomplishing the project vide notification dated 20.08.1994 was in the nature of a bargain. It disentitled the landowners to seek further release of

the remaining land. This is apart from the fact that consequent upon obtaining the possession of the land by the State, the release of the remaining land under Section 48 of the Act was otherwise not legally possible.

57) In the light of the foregoing discussion, we are of the considered view that the High Court failed to examine the issues arising in the case in its correct perspective. We cannot, therefore, concur with the reasoning and the conclusion arrived at by the High Court which wrongly upheld the order dated 10.06.2004 passed by the concerned Revenue Minister.

58) The appeal thus succeeds and is accordingly allowed. Impugned order is set aside. As a consequence, the writ petition filed by respondent No.1 stands dismissed with costs quantified at Rs.25,000/□ to be payable by respondent No.1 to the appellant.

……J. (ABHAY MANOHAR SAPRE) ……J. (UDAY UMESH LALIT) New Delhi, August 03, 2018