Supreme Court of India
Municipal Corporation Of Greater ... vs The Industrial Development & ... on 6 September, 1996
Equivalent citations: JT 1996 (8) 16
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
MUNICIPAL CORPORATION OF GREATER BOMBAY

Vs.

RESPONDENT:
THE INDUSTRIAL DEVELOPMENT & INVESTMENT CO. PVT. LTD. & ORS.

DATE OF JUDGMENT: 06/09/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
MAJMUDAR S.B. (J)

CITATION:
JT 1996 (8) 16

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.B. MAJMUDAR, J.

I have gone through the judgment prepared by my esteemed learned Brother K. Ramaswamy, J. I respectfully agree with the conclusion to the effect that respondents nos. 1 and 2 had missed the bus by adopting an indolent attitude in not challenging the acquisition proceedings promptly. Therefore, the result is inevitable that the writ petition is liable to be dismissed on the ground of gross delay and laches.

However, I may mention at this stage that observations made by my learned brother K. Ramaswamy, J., In connection with utilisation of land acquired under the Maharashtra Regional Town Planning Act (hereinafter referred to as the 'M.R.T.P. Act') for one public purpose to be used for another public purpose, are with great respect not found by me to be apposite. I, therefore, record my reasons for the said view.

Even though the proposal under Section 126(1) is for acquisition of land for a specified public purpose, if the planning authority wants to acquire the land subsequently for any other public purpose earmarked in the modified scheme as has happened in the present case that is if the appellant Corporation which had initially proposed to acquire the land for extension of sewerage treatment plant wanted subsequently to acquire the same land for its staff quarters then such a purpose must be specifically indicated in the plan meaning thereby that the land must be shown to be reserved for the staff quarters of the Corporation and then the Special Planning Authority which had become the appropriate planning authority, i.e., B.M.R.D.A. would be required to issue a fresh proposal under Section 126(1) read with Section 40(3)(e) and Section 116 of the M.R.T.P. Act and follow the gamut thereafter. So long as that was not done the earlier proposal under Section 126(1) and the consequential notification by the State Government under Section 126(2) which had lost their efficacy could not be revitalized.

I also do not subscribe to the general observation that a sitting tenant of the land which comes to be subjected to acquisition proceedings under Sections 4 and 6 of the Land Acquisition Act, in no case can challenge the said acquisition proceedings. In appropriate cases such a challenge can be levelled by the concerned tenant having sufficient subsisting interest in the land. In my view, therefore, on merits the learned Single Judge as well as the Division Bench had rightly held that respondent's writ petition had good case on merits.

However, as the learned Single Judge dismissed the writ petition on the ground of delay and laches and his view was upset by the Division Bench which according to me had not taken correct view on this score as held by my learned brother K. Ramaswamy, j., and with which view I respectfully concur, I deem it fit to record my additional reasons for non-suiting the respondent-petitioners on that score.

It is trite to observe that before the planning proposals for Bandra-Kurla Complex were finalised and published by the State of Maharashtra on 3rd May 1979, the requisite statutory procedure of Section 40 sub-section 3(d), was necessarily followed by the Special section 3(d), was necessarily followed by the Special Planning Authority and that happened between 7th March 1977 and 3rd May 1979. To recapitulate as per Section 40 sub-section 3(d) of the M.R.T.P. Act before submitting planning proposals to the State Govt., the Special Planning Authority has to carry out survey of the land and to prepare existing land-use map of the area, and to prepare and publish the draft proposal to the lands within its jurisdiction together with a notice in the Official Gazette and local newspapers in such manner as the Special Planning Authority may determine. It has also to invite objections and suggestions from the public within the period of not more than 30 days from the date of notice in the Official Gazette. Thus these proposals are to be published not only in the Official Gazette but in local newspapers also. It is, therefore, obvious that the proposals for changing the reservations of the concerned lands in the area and shifting of the sewage plant from Block 'H' to Block 'A' in the planning proposal for Bandra-Kurla Complex were published by the Special Planning Authority prior to 3rd May 1979 and after 7th March, 1977 when that authority was constituted. When such proposals got published in local newspapers it is too much for the respondent-writ petitioners to submit that they never knew about these proposals and they came to know about these proposals only on 26th May 1983 when public notice was issued in Times of India regarding the approval of

these proposals by the State Govt, Even assuming that the respondent Nos.1 and 2 might have not read the Government Gazette at least notices issued in local newspapers would not have escaped their attention in 1979. By 1979, therefore, Respondents nos,1 and 2 must have known or with due diligence would have knows that there was a proposal to de-reserve their land from the earmarked purpose of extension of sewerage treatment plant of Municipal Corporation. They may not object to such a favorable proposal but obviously they should be inquisite enough to know as early as between 1977 and 1979 that the could on their land was getting lifted. Therefore, they would have been put to the enquiry as to what happened to this proposal and what was the final outcome thereof. Instead of bothering anyway about it, they just slumbered on and supported their claims for compensation before the Land Acquisition Officer under Section 9 of the Act, joined issues thereon in 1979 and onwards and allowed the award to be rendered as late on 24th February 1983. Not only that they also allowed the possession to be taken by the Corporation on 4th March 1983 though of course it was symbolic possession as they were tenants in possession. To add to this indolent conduct and connivance on the part of the respondent-writ petitioners, in these very acquisition proceedings, they filed reference application under Section 18 of the Land Acquisition Act on 7th April 1983 claiming additional compensation. Thus upto 7th April 1983 they had no objection to their land had already got de-reserved for the extension of the sewage plant from being acquired and they concentrated on compensation only. It is their own case that even on 10th January 1986 there was a meeting of the Bombay Municipal Corporation Works Committee and in that meeting the members present had asked the Dy. Municipal Corporation to make statement on certain queries raised by him and one of the queries was about absence of proposals to have extension of Sewage Purification Plant, Dharavi. This also shows that Respondent Nos. 1 and 2 were fully alive to the fact that there was no scope for extension of Dharavi Sewage Plant on their land. Despite all these facts within the knowledge of the respondent nos. 1 & 2 they set on the fence and allowed the acquisition proceedings to continue and reach their terminus and even after award was passed and possession was taken by the Municipal Corporation, they staked their claims only for additional compensation. It is only thereafter that they filed writ petition on 14th July 1983. Such a belated writ petition, therefore, was rightly rejected by the learned single Judge on the ground of gross delay and laches. The respondent-writ petitioners can be said to have waived their objections to the acquisition on the ground of extinction of public purpose by their own inaction, lethargy and indolent conduct. The division bench of the High Court had taken the view that because of their inaction no vested rights of third parties are created. That finding is obviously incorrect for the simple reason that because of the indolent conduct of the writ petitioners land got acquired, award was passed, compensation was handed over to various claimants including the landlord. Reference applications came to be filed for larger compensation by claimants including writ petitioners themselves. The acquired land got vested in the State Govt, and the Municipal Corporation free from all encumbrances as enjoined by Section 16 of the Land Acquisition Act. Thus right to get more compensation got vested in diverse claimants by passing of the award, as well as vested right was created in favour of the Bombay Municipal Corporation by virtue of the vesting of the land in the State Government for being handed over to the Corporation. All these events could not be wished away by observing that no third party rights were created by them. The writ petition came to be filed after all these events had taken place. Such a writ petition was clearly still borne due to gross delay and laches. I, therefore, respectfully agree with the conclusion to which my learned brother Ramaswamy, J. has reached that on the ground of delay and laches the writ petition is required to be dismissed and the appeal has to be

allowed on that ground.