Govt. Of A.P. & Anr vs Syed Akbar on 19 November, 2004

Equivalent citations: AIR 2005 SUPREME COURT 492, 2005 (1) SCC 558, 2004 AIR SCW 7125, 2005 (2) SRJ 130, 2004 (7) SLT 97, 2004 (9) SCALE 553, (2004) 10 JT 569 (SC), (2005) 25 ALLINDCAS 649 (SC), (2004) 5 CTC 506 (SC), (2005) 1 ANDH LT 36, (2005) 58 ALL LR 366, (2005) 2 LANDLR 167, (2005) 1 PAT LJR 219, (2005) 1 LACC 233, (2004) 8 SUPREME 621, (2005) 2 ICC 224, (2004) 9 SCALE 553

Author: Shivaraj V. Patil

Bench: Shivaraj V. Patil, B.N. Srikrishna

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           CASE NO.:
Appeal (civil)  6546 of 1999

PETITIONER:
Govt. of A.P. & Anr.

RESPONDENT:
Syed Akbar

DATE OF JUDGMENT: 19/11/2004

BENCH:
SHIVARAJ V. PATIL & B.N. SRIKRISHNA

JUDGMENT:
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J U D G M E N T W I T H CIVIL APPEAL NO. 4110 OF 2000 Shivaraj V. Patil J.

CIVIL APPEAL NO. 6546 OF 1999 The State of Andhra Pradesh is in appeal questioning the validity and correctness of the impugned order made by the Division Bench of the High Court in Writ Appeal No. 411 of 1998.

The few facts which are relevant and necessary for the disposal of this appeal are the following:

> An extent of 1573 sq. yds. in survey No. 54/2 of Kakaguda village in Hyderabad district was acquired by the State for improvement of Hyderabad-Karimnagar-Ramagundam Road which included the land of the respondent to the extent of 8 guntas (968 sq. yds.). After completing the acquisition proceedings, the possession of the said land was taken. Aggrieved by the amount of compensation determined @ Rs. 1400 per sq. yds., the respondent sought reference under Section 18 of the Land Acquisition Act,1894 (for short 'the Land Acquisition Act) seeking enhancement of compensation amount and the reference is pending disposal before the Reference

Court.

Out of the land so acquired, only 424 sq. yds., of land was utilized and the rest of the land remained vacant. The Resident Engineer (Roads & Buildings) addressed a letter dated 27.12.1996 to the Land Acquisition Officer (Special Collector) informing him that it was difficult to protect the unused land from future encroachment. Having come to know about this letter, the respondent made representations to the District Collector to re-assign unused land to him and that he was prepared to reimburse the compensation that had been received by him along with interest. He also indicated that he was prepared to give up his claim for enhancement of compensation to that extent of land. There was no response from the collector. The respondent filed a writ petition No. 14062/97 in the High Court seeking a writ of mandamus to the authorities to re- assign the unused land to him. He based his claim on the Standing Order No. 90 (32) of the A.P. Board of Revenue. A learned Single Judge of the High Court disposed of the writ petition on 4.7.1997 directing the District Collector to consider the request of the respondent for re-assigning of the unused land in the light of the order of the Board of Revenue aforementioned having regard to the letter of the Resident Engineer dated 27.12.1996 and by collecting the amount of compensation already paid with 12% interest. Pursuant to the directions given in Writ Petition No. 14062 of 1997 the respondent made representation to the authorities seeking re-assignment of unused land. The District Collector by his order dated 18.10.1997 rejected the said representation, holding that the said land was suitable for construction of Mandal Office. In this order the District Collector referred to the judgments of the Supreme Court in State of Kerala and others vs. M. Bhaskaran Pillai and another [(1997) 5 SCC 432], and Sri Gulam Mustafa and others vs. State of Maharashtra and others [AIR 1977 SC 448]. As against this order of the District Collector the respondent filed another writ petition No. 33171 of 1997 in the High Court. The learned single Judge, after considering the contentions of the parties, by order dated 2.1.1998, allowed the writ petition directing the authorities to hand over the unused portion of the land to the respondent by collecting the amount of compensation already paid with interest at the rate of 12%. It may be added here itself that para 32 of the Board's Standing Order No. 90 was amended by the Government Order dated 9.10.1998 to the effect that in case the land acquired remains unused for any reason, it could be utilized for any other public purpose as deemed fit. Aggrieved by the order of the learned Single Judge, the State filed a writ appeal before the High Court. By the impugned appeal, the Division Bench of the High Court held that apart from the Board's standing order 90(32), Section 54-A of the Andhra Pradesh (Telangana Area) Land Revenue Act (for short `the Act') also supported the case of the respondent. The Division Bench also took the view that the proposal to construct Mandal Revenue Office building in the unused land was an after-thought and was made with a view to circumvent the order passed by the learned Single Judge and even otherwise, the unused land in question was so small that it would not be sufficient to construct any building. Having held so, the Division Bench of the High Court dismissed the writ appeal by the judgment which is under

challenge in this appeal.

The facts are not in dispute. The questions that arise for consideration are whether direction could be given to the appellants to re-assign unused land to the respondent which was duly acquired by the authorities and the acquisition proceedings had become final except that the reference is pending before the Reference Court only with regard to enhancement of compensation and whether the Board's Standing Order No. 90(32) and Section 54-A of the Act can be applied for reassignment of the unused land in favour of the respondent.

Learned counsel for the appellants contended that once the land is acquired in accordance with law which vests in the Government free from all encumbrances, no direction could be given to re-convey the unutilized land which is part of the acquired land; Section 54-A of the Act is not at all applicable to the facts of the present case; the Standing Order No. 90(32) of the Board of Revenue has no statutory force and at any rate it cannot override the provisions of the Land Acquisition Act and that the Division Bench of the High Court was not correct in observing that the unused land was not sufficient for the purpose of construction of the Mandal Revenue Officer; it was for the concerned authorities to examine the sufficiency or otherwise of the available land.

In opposition, the learned counsel for the respondent made submissions supporting the impugned order for the very reasons stated in it. In his argument, he reiterated the submissions that were made before the High Court. According to him, having regard to the facts and circumstances of the case, this Court may not interfere with the impugned order exercising jurisdiction under Article 136 of the Constitution.

In order to appreciate the respective contentions advanced on behalf of the parties, it would be useful to notice relevant portion of the Standing Order No. 90(32) of Board of Revenue and Section 54-A of the Act. The Board's standing order "32. Disposal of land which is no longer required for the public purpose for which it was acquired.

Notes (1) No land shall be disposed of, under this paragraph, to any person other than the citizen of India, except by the Collector or the Board and with the previous permission of State Government, every grant made under this paragraph shall be subject to the condition that, if the land is alienated without the sanction of Government in favour of any person other than a citizen of India, the grant shall thereupon become null and void.

.....

When land acquired for a public purpose, is subsequently relinquished, it should be disposed of as follows:-

(i) If the land relinquished is likely to be again required for public purposes, it should be merely leased out for such term as may be considered, desirable in each case.

(ii) .....

(iii) .....

(iv) If the land is not declared unfit for permanent occupation under clause (i) or

(ii) above and was agricultural or pastoral land at the time of the acquisition, it should be disposed of in accordance with the following instructions which should not be deviated from without the previous sanction of State Government: -

Such lands should be notified for sale in public auction by giving wide publicity in respect of the sales in the villages by beat or tom-tom and affixing notice of sales in conspicuous places in the villages concerned. The date of sale should be fixed allowing an interval of thirty days between the date of publicity and the date of sale. The land should be sold by public auction subject to the annual assessment. There shall be no upset price except in the case of railway relinquished lands where a minimum or upset price should be fixed in consultation with Railway Administration before auction. If at the time of sale anybody puts forth his claim in respect of any field either as an adjacent owner, or as an original owner or as heir of the original owner, the sale of that field should be stopped and his claim investigated and disposed of in the manner specified in sub- clause (2) and (3). If it is found that his claim is not proved, the field should be sold by public auction."

The amendment to paragraph 32 of Board's Standing Order No. 90(32) brought about by G.O.Ms. No. 783 dated 9.10.1998 reads:

"For paragraph 32 of B.S.O. 90, the following paragraph shall be substituted, namely:-

PARA 32 Utilisation of acquired lands for any other Public Purpose:

"The land acquired for a public purpose under the Land Acquisition Act, 1894 shall be utilized for the same purpose for which it was acquired as far as possible. In case, the land is not required for the purpose for which it is acquired due to any reason, the land shall be utilized for any other public purpose, as deemed it, including afforestation."

Section 54-A of the Act reads:

"Procedure in respect of land acquired for purpose of public benefit and no more required When agricultural or pasturage land acquired for public benefit is no longer required, the patta thereof shall be made in the name of the person or his successor from whom such land was acquired, provided he consents to refund the compensation originally paid to him. If such person or his successor does not take the land, it may be given on patta under Section 54."

It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or to re-convey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled. In State of Kerala and Ors. Vs. M. Bhaskaran Pillai & Anr. [(1997) 5 SCC 432], para 4 of the said judgment reads:-

> "4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is not other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

In that case, an extent of 1.94 acres of land was acquired in 1952 for construction of National Highway and the construction was completed in 1955 in 80 cents of land and the balance of land remained unused. The remaining land was sought to be sold to the land owner at the same rate at which the compensation was awarded under Section

11. This again was challenged in the writ petitions. The Government tried to sustain the action on the basis of the executive order issued by the Government for permission for alienation of the land. On these facts, the position of law was made clear in para 4 extracted above. Thus, it is clear that under Section 16 of the Land Acquisition Act, the acquired land should vest in the State free from all encumbrances and that any executive order inconsistent with the provisions of Land Acquisition Act was invalid. Further that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In our view, this decision supports the case of the appellants fully.

In the case Chandragauda Ramgonda Patil & Anr. vs. State of Maharashtra & Ors. [(1996) 6 SCC 405], claim of the petitioner for restitution of the possession of the land acquired pursuant to the resolution of the State Government was rejected. In para 2, this Court observed thus:-

> "2..... We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken way back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the writ petitions. It is axiomatic that the land acquired for a public purpose would be utilized for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilized, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions."

Yet in another recent decision, this Court in Northern Indian Glass Industries vs. Jaswant Singh & Ors. [(2003) 1 SCC 335] referring to the case of Chandragauda Ramgonda Patil (supra) and other cases held that "if the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land". Paras 10 and 11 of the said judgment read thus:-

> "10. In Chandragauda Ramgonda Patil vs. State of Maharashtra [(1996) 6 SCC 405] it is stated that the acquired land remaining unutilized was not intended to be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of notification.
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> 11. Yet again in C.Padma Vs. Dy. Secy. To the Govt. of T.N. [(1997) 2 SCC 627], it is held that acquired land having vested in the State and the compensation having been paid to the claimant, he was not entitled to restitution of possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for other purpose."

From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order.

At the hearing, we specifically asked learned counsel for the respondent whether the Board's Standing Order 90(32) was issued under any particular statute, the learned counsel was not able to point out to any provision of law under which it was issued. He was not in a position to show that the said order bears any statutory force. Even otherwise, as per para 32 of the said order, the land acquired, no longer required for the public purpose for which it was acquired, could not be disposed of in favour of any person other than the citizen of India and that too without the sanction of the Government . If the land acquired for the public purpose is specifically relinquished, such land could be disposed of as stated in the said paragraph. If the land relinquished is likely to be again required for public purposes, it should be merely leased out for such term as may be considered desirable in

each case. If the acquired land was an agricultural land at the time of acquisition, it should be disposed of inviting for sale in public auction by giving wide publicity in respect of sale. If at the time of sale, anybody puts forth his claim in respect of any field either as an adjacent owner or as an original owner, the sale of that field should be stopped and his claim investigated and disposed of in the manner specified in sub- clauses (i) and (iv) of Note (2) of the Board's order 90(32). If it is found that his claim is not proved, the field should be sold by public auction. In the case on hand, there is nothing on record to show that the part of the acquired land which remained unused was relinquished by the Government. A letter of Resident Engineer stated that the unused land was no more required cannot amount to relinquishment of the said land by the competent authority. In order to make a claim under para 32 of the said Board's Standing Order in the first place, it was necessary that the competent authority had subsequently relinquished the unused land. After such relinquishment of the land, the land had to be notified for sale in public auction. If at the time of sale of such land, the original owner made a claim, sale could be stopped and his claim could be investigated and thereafter the land was to be disposed of in the manner specified under the said paragraph. Added to this, by virtue of the amendment to para 32 brought about by G.O.Ms. No. 783 dated 9.10.1998, the land for the public purpose shall be utilized for the same purpose for which it was acquired as far as possible and in case the land is not used for the purpose for which it was acquired due to any reason, the land shall be utilized for any other public purpose as deemed fit. It appears this amendment was not brought to the notice of the High Court.

Chapter V of the Act deals with occupation of khalsa land and right of occupant. Under Section 54, procedure is prescribed for acquiring unoccupied land. This Section enables a person to submit a petition to Tehsildar if he is desirous of taking unoccupied land. On such application, the Tehsildar may in accordance with the rules made by the Government give permission in writing for occupation. Section 54-A indicates the procedure in respect of land acquired for the purpose of public benefit and which is no more required. It is clear from plain and clear language of the said Section that when an agricultural land acquired for public benefit is no longer required, the patta thereof shall be made in the name of the person or his successor from whom such land was acquired provided he consents to refund the compensation originally paid to him. This Section does not say that the agricultural land acquired for public benefit is no longer required for the purpose for which it is acquired. This Section can be attracted only in a case where agricultural land acquired for public benefit is no longer required not necessarily for the specific purpose for which it was acquired. Added to this, that the land is no more required is a decision required to be made by the competent authority. As in the present case, mere letter of Resident Engineer that the unused land is no more required is not enough. When the land is acquired under the Land Acquisition Act which is vested in the State Government free from all encumbrances, the question of reconveying the land as claimed by the respondent could not be accepted in view of the clear position of law stated in the decisions of this Court aforementioned. Whether the unused remaining land out of the acquired land was sufficient or not for the purpose of construction of Mandal Revenue Office could not be decided by the High Court. It was for the competent authorities to decide about the same. The High Court, in our view, was not right in saying that the proposal to construct the Mandal Revenue Office in the unused land acquired was an after-thought. No material was placed on record to attribute any mala fides on the part of the authorities or to support the case that the proposal to build a Mandal Revenue Office was an after- thought.

Thus viewed from any angle, we find it difficult to sustain the impugned order. Consequently, it is set aside and the writ petition filed by the respondent is dismissed. The appeal is allowed accordingly. No costs.

CIVIL APPEAL NO. 4110 OF 2000 The building bearing No. 21/1/683 situated at Kokarwadi, Rikabgunj, Hyderabad belonging to respondent no. 1 was acquired by erstwhile Hyderabad Government for Kokarwadi Scheme of the then City Improvement Board. The award was passed under the Land Acquisition Act on 25.7.1953 and compensation was paid to the respondent no. 1. In 1956, the Andhra Pradesh Housing Board was established and all the properties of the then City Improvement Board stood transferred and vested in the Andhra Pradesh Housing Board, the appellant herein. Since the Kokarwadi Scheme was abandoned, the building in question was leased out to the respondent no. 2. The respondent no. 1 made representation to the appellant seeking reconveyance of the building on payment of compensation amount with interest relying on Standing Order No. 90(32) of the Board of Revenue. On 28.9.1979, appellant passed resolution for disposing of the property and similar other properties to the tenants. On 6.2.1989, the appellant rejected the representation of the respondent no. 1. Under the circumstances, the respondent no. 1- erstwhile owner of the building filed a original suit in City Civil Court, Hyderabad, seeking a mandatory injunction for re-conveyance of the building and possession of the same. The appellant contested the suit. The trial court decreed the suit in favour of the respondent no. 1 relying on the Standing Order No. 90(32) of the Board of Revenue. The respondent no. 2 here who was in occupation of the property as a tenant was defendant no. 2 in the suit. The appellant filed first appeal before the 4th Additional Chief Judge, City Civil Court, Hyderabad. The second respondent did not prefer any appeal against the decree made by the trial court. The Addl. Chief Judge dismissed the first appeal affirming the decree made by the trial court. The appellant filed the second appeal before the High Court which was also dismissed. Hence, this appeal.

Learned counsel for the parties in this appeal also made similar submissions that were made in Civil Appeal 6546 of 1999 bringing to our notice facts of this case.

In the view we have taken in Civil Appeal No. 6546/1999 dealing with the Board's Standing Order No. 90(32) and Section 54-A of the Act and keeping in view the settled position of law, this appeal is also entitled to succeed. Under the circumstances it is unnecessary to deal with other contentions. Accordingly, this appeal is allowed. The impugned judgment is set aside and the suit filed by respondent no. 1 (plaintiff) is dismissed with no order as to costs.