

Chandragauda Ramgonda Patil and Another

Vs

State of Maharashtra and Others

SLPS (C) No. 16573 of 1996 With No. 19030 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

02.09.1996

ORDER

1. These special leave petitions have been filed against the orders passed in WP No. 5196 of 1989 on 12-3-1990 and WP No. 1552 of 1996 on 26-4-1996. There is absolutely no merit for condonation of delay in the first writ petition. As regards the second writ petition, the facts are not in dispute. Way back in 1974, notification under Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) ("MRTP Act", for short) was issued after the approval of the Scheme by the State Government, for acquiring the land for utilisation thereof for the stated Scheme. Pursuant thereto, an award came to be passed by the Land Acquisition Officer under Section 11 of the Land Acquisition Act, 1894 (for short, "the Act") on 11-11-1977. Possession was taken earlier on 21-10-1974. After the utilisation of the land, surplus land was sought to be used for allotment to some of the Councillors and the employees of the Kolhapur Municipality. Consequently, the first writ petition came to be filed which was dismissed on merits on 12-3-1990. Thereafter, the petitioners filed a suit challenging the acquisition and the suit came to be dismissed as withdrawn being not maintainable. Writ Petition No. 1552 of 1996 came to be filed. That writ petition was also dismissed on the ground that the earlier order in the writ petition operated as res judicata. Therefore, the second writ petition was held to be not maintainable.

2. Shri Naik, the learned Senior Counsel appearing for the petitioners, contended that in the second writ petition, the petitioner sought restitution of the possession pursuant to the resolution of the State Government dated 10-10-1973 under which the Government directed that the surplus land was to be utilised first for any other public purpose and in the alternative it was to be given back to the erstwhile owners. Since he had sought enforcement of the said government resolution, the writ petition could not be dismissed on the ground of constructive res judicata. He also seeks to rely upon certain orders said to have been passed by the High Court in conformity with enforcement of the government resolution. 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 utilised 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 unutilised, 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.

3. The special leave petitions are dismissed.