SUPREME COURT OF INDIA

Sulochana Chandrakant Galande

Vs.

Pune Municipal Transport

C.A.No.492 of 2007

(P.Sathasivam and Dr.B.S.Chauhan JJ.)

03.08.2010

JUDGEMENT

Dr. B.S.Chauhan, J.

1. This appeal has been preferred against the Judgment and order of Bombay High Court dated 20th February, 2006, passed in Writ Petition No. 1018 of 1999, filed by the respondent herein setting aside the order passed by the State Government withdrawing the proceedings under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called as, "Act, 1976").

2. Facts and circumstances giving rise to the present case are that the Act, 1976 was enacted to provide for imposition of a ceiling on vacant land in urban agglomerations for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith. The said Act prescribed the maximum ceiling to which the land can be retained by the owner and determination of the surplus land and transfer thereof in favour of the State after drawing the final statement under Section 9 of the Act, 1976, and the State would acquire the vacant land in excess of the ceiling limit under Section 10 of the Act, 1976. The Act came into force on 17th February, 1976. On the said date, the suit land was not within urban limits, however it was included in the urban area residential zone only with effect from 17.05.1976, by extending the limits of the Municipal Corporation. The suit land was acquired under the Act, 1976, in the years 1978-1979 and its possession was taken and handed over to Pune Municipal Transport (for short PMT) for establishing a bus depot and staff quarters. In 1988, the bus depot was constructed on a part of the suit land, however, the appellant preferred a revision under Section 34 of the Act, 1976, dated 6.4.1998 contending that the land ought not to have been acquired under the Act, 1976, on the ground that on the date of commencement of the Act, 1976, i.e. 17.2.1976, the suit land was not within the limits of urban area. In order to substantiate the claim, reliance was placed on the *Judgment Ors.*[1], wherein it has been held that for the purpose of the Act, 1976, the categorization of the land in the Master Plan in

existence at the time of commencement of the Act into force was a relevant factor and any subsequent change in the Master Plan cannot be taken into consideration.

> "The said application was allowed by the Hon'ble Minister, exercising his revisional powers by order dated 29.09.1998."

3. Being aggrieved, the PMT filed writ petition No. 1018 of 1999 before the High Court of Maharashtra and the said writ petition has been allowed vide Judgment and order dated 20.02.2006 in spite of the fact that the Act, 1976 stood repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter called `Act 1999') with effect from 18.03.1999. Subsequent thereto, this Court in State of A.P. overruled the Judgment in Atia Mohammadi Begum (supra). Hence, this appeal.

4. Sh. A.K. Ganguly, learned senior counsel for the appellant, has submitted that the High Court erred in interfering with the order of the Revisional Authority, which was fully justified being in consonance with the law laid down by this Court in Atia Mohammadi Begum (Supra). The provisions of Section 34 of the Act, 1976, do not provide for any limitation and in case, proceedings had been initiated against the appellant in contravention of the Act, 1976 itself, the order passed by the prescribed authority dated 23.05.1979 was a nullity, and, therefore, was unenforceable and inexecutable. It has also been pointed out by Mr. Ganguly that originally, the land was allotted to PMT for establishing a bus depot, though the land was earmarked for residential purposes, thus, it was not permissible for the respondent authority to change the user of the land. If the land is vested in the State free from all encumbrances without any authority of law, the original tenure holder is entitled to possession thereof. The Act, 1976, itself stood repealed and is no more in force. Thus, the appeal deserves to be allowed.

5. On the contrary, Sh. Sanjay V. Kharde and Sh. Amol Chitale, learned counsel appearing for respondents, have submitted that the judgment in Atia Mohammadi Begum (supra) has been overruled by this Court in N. Audikesava Reddy (supra). Therefore, it cannot be held that Atia Mohammadi Begum (supra) laid down the correct law. The order passed by the prescribed authority dated 23.05.1979 attained finality as it was not challenged by the appellant by filing an appeal under Section 12 before the Urban Land Tribunal, though the Act, 1976, also provides for a second appeal to the High Court. The appellant could not maintain the Revision after expiry of about two decades. The Government of Maharashtra could not have entertained the Revision at such belated stage. The revision was liable to be rejected only on the ground of delay. The land, after being declared surplus under the Act, 1976, was acquired under Section 10 of the Act, 1976, and it vested in the State absolutely free from all encumbrances. The land once vested cannot be divested. After vesting the land in the State, in case, the State authority allots the land to any other department or corporation for a specific purpose, it does not loose the competence to change the user of the land and in case, it is changed, the original tenure holder cannot be heard raising any grievances whatsoever. The Act, 1976, stood repealed, but this fact would have no bearing on this case

for the reason that possession of the suit land had been taken in 1979 itself. The appeal lacks merit and is liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record. The Scheme of the Act, 1976 provides that the prescribed authority shall make an order declaring the surplus land. The land would be acquired by the State and tenure holder is entitled to have an amount of compensation. Section 10(3) of the Act, 1976, provides that after acquisition and publication of the Notification under Section 10(1) of the Act, 1976 "the land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified".

7. Section 11 of the Act, 1976, provides for the Mode of Payment of the amount for vacant land acquired. Any person aggrieved, has a right to file an appeal before the Land Tribunal and a second appeal before the High Court.

8. The provisions of Section 10(3) of the Act, 1976 are analogous to Section 16 of the Land Acquisition Act, 1894 (hereinafter called the `Act 1894'). Acquisition proceedings cannot be withdrawn/abandoned in exercise of the powers under Section 48 of the Act 1894 or Section 21 of the General Clauses Act, 1897 once the possession of the land has been *Vishnu Prasad Sharma & Ors.*[2], *LT.Rajasthan & Ors.*[3], *Mandir Shree Sita Collector & Ors.*[4], *Bangalore Haryana & Ors.*[5].

9. The meaning of the word `vesting' has been considered by this Court time and again. In The Fruit & Vegetable 1957 SC 344, this Court held that the meaning of word `vesting' varies as per the context of the Statute in which the property vests. While considering the case under Sections 16 and 17 of the Act 1894, the Court held as under:-

> "...the property acquired becomes the property of Government without any condition or limitations either as to title or possession. The legislature has made it clear that vesting of the property is not for any limited purpose or limited duration."
>
> (Emphasis added).

10. "Encumbrance" actually means the burden caused by an act or omission of man and not that created by nature. It means a burden or charge upon 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. It may be a mortgage or a deed of trust or a lien of an easement. An encumbrance, thus, must be a charge on the property. It must run with the property. (Vide *Collector of Sharma & Ors.*[6], and AI Champdany 486). *Ors.*[7], this Court held that the terminology `free from all encumbrances' used in Section 16 of the Act 1894, is wholly unqualified and would en-compass the extinguishing of "all rights, title and interests including easementary rights" when the title vests in the State.

11. Thus, "free from encumbrances" means vesting of land in the State without any charge or burden in it. Thus, State has absolute title/ownership over it.

> *"Ors.*[8]*,*this Court held that once land vests in the State free from all encumbrances, it cannot be divested.
>
> The same view has been reiterated in *Awadh Bihari Yadav & Lucknow & Ors*[9] *Pratap & Anr. (Supra)*"

12. *Maharashtra & Ors.*[10]*,Allahabad Tamil Nadu & Ors.*[11]*, Printers (Mysore) Ltd.*[12]*and Government of Andhra Pradesh &*

13. So far as the change of user is concerned, it is a settled 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.

"*State of Maharashtra & Ors.*[13], this Court held as under:- "Once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring Authority diverts it to a public purpose other than the one stated in the.....declaration."

14. Deputy *Secretary to the Government of Tamil Nadu & Ors.*[14], this Court held that if by virtue of a valid acquisition of land, land stands vested in the State, thereafter, claimants are not entitled to restoration of possession on the grounds that either the original public purpose is ceased to be in operation or the land could not be used for any other purposes.

15. *Bengal*[15], and Northern Indian Glass Court held that, the land user can be changed by the Statutory Authority after the land vests in the State free from all encumbrances.

16. In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the land owner 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. The person interested cannot claim the right of restoration of land on any ground, whatsoever."

17. In the instant case, there is no pleading by the appellant in respect of the receipt of compensation. No explanation could be furnished as to under what circumstances the appeal was not filed if the appellant was so aggrieved by the order of final assessment under Section 9 of the Act, 1976.

18. The suit land was acquired in 1979. Revision was preferred in 1998, after expiry of about two decades. Section 34 reads as under:- "The State Government may, on its own motion, call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred under Section 12 or Section 30 or Section 33 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit ....."

19. Undoubtedly, Section 34 does not prescribe any limitation during which the Revisional power can be exercised by the State Government either on application or suo moto.

20. The question does arise as to whether absence of limitation in Section 34 confers unfettered power to vary or revoke the order of the prescribed authority without any outside limitation in point of duration i.e. does it confer an everlasting or interminable power in point of time. If the contention raised by Mr. Ganguly that such provisions of Section 34 do not prescribe any limitation, and it confers an interminable power upon the State Government in point of time to exercise the Revisional power, is accepted, there will be no finality of the proceedings taken under the Act, 1976. 1969 SC 1297, this Court considered a similar provision in Bombay Land Revenue Code, 1879, which also did not provide any limitation for exercising the Revisional power by the Commissioner under Sections 65 and 211 of the Code. The Court held that in spite of the fact that the provisions do not prescribe for any limitation for exercising such Revisional powers, "this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order, which is being revised". The Court further explained that if the power is not exercised within the reasonable time, it may disturb the possession of the person after an inordinate delay and the occupant who had spent his life savings in developing the land, may lose the benefit thereof. Therefore, the authority must not entertain revisions at a belated stage.

21. In Ibrahimpatnam Taluk Vyavasaya Coolie Sangham considered the provisions of the Andhra Pradesh (Tilangana Area) Tenancy and Agricultural Lands Act, 1950, wherein the provisions contained in Section 50-B(4) empowered the statutory authority to exercise suo moto revisional power at any time. The Court held as under :- Use of the words "at any time" in sub- Section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo moto power could be exercised reckoning or starting from a particular date advisedly and contextually.

> “Exercise of suo moto power depended on facts and circumstances of each case.
>
> In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud.
>
> While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of

considerable time, change of the provisions of other Acts (such as Land Ceiling Act).....

Use of the words "at any time" in sub- section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words "at any time", the suo moto power under sub- Section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo moto power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But, that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."

22. The said judgment was approved and followed by this *Reddy & Ors.*[16].

23. The legislature in its wisdom did not fix a time limit for exercising the revisional power nor inserted the words "at any time" in Section 34 of the Act, 1976. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case, it is assumed that the legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure.

"The Court has to construe the statutory provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute.

In view of the above, we reach the inescapable conclusion that the Revisional powers cannot be used arbitrarily at belated stage for the reason that the order passed in Revision under Section 34 of the Act, 1976, is a judicial order. What should be reasonable time, would depend upon the facts and circumstances of each case."

24. If some person has taken a relief from the Court by filing a Writ Petition immediately after the cause of action had arisen, petitioners cannot take the benefit thereof resorting to legal proceedings belatedly. They cannot take any benefit thereof at such a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

"this Court rejected the contention that a petition should be considered ignoring the delay and laches, on the ground that the petitioner therein filed the petition just after

coming to know of the relief granted by the Court in a similar case, as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches."

26. The same view has been reiterated by this Court in, observing as under:- "Suffice it to state that appellants may be sleeping over their rights for long and elected to wake-up when they had impetus from Veerpal Chauhan and Ajit Singh's ratio.....desperate attempts of the appellants to re-do the seniority, held by them in various cadre.....are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well."

27. *Ors.*[17], this Court considered a case where petitioner wanted to get relief on the basis of the judgment of this Court wherein a particular law had been declared ultra vires. The Court rejected the petition on the ground of delay and laches observing as under:- "There is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they have not pursued for several years. Petitioners were not vigilant but were content to be dormant and close to sit on the fence till somebody else's case came to be decided."

28. However, it will be a different case altogether, where the law, under which an order has been passed, is declared ultra vires/unconstitutional and the order, thus, passed is rendered a nullity. The party may ask for appropriate relief as property had been acquired under the law, later so declared void. [See *& Anr.*[18]*, and M/s. Rup Diamonds (supra)*].

29. Be that as it may, the law laid down by this Court in *Atia Mohammadi Begum (supra)* has not been approved by this Court in subsequent Judgment i.e. N. Audikesava Reddy (supra), wherein it has clearly been held as under:-

> "The observations that the authorities by their subsequent action after 17th February, 1976 cannot alter or introduce the master plan which has the effect of increasing the area of excess vacant land do not represent the correct view of law.
>
> The aforesaid explanation to Section 6(1), inter alia, provides that where any land, not being vacant land, situated in a State in which this Act is in force has becomes vacant land by any reason whatsoever, the date on which such land becomes vacant land would be the date of the commencement of the Act as regards such land.
>
> Development and town planning are ongoing processes and they go on changing from time to time depending upon the local needs. That apart, the definition of the "master plan" in Section 2(h) is very significant. It reads as under:
>
> "2(h) 'master plan', in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the

development of such area or part thereof and providing for the stages by which such development shall be carried out."

The above provision, inter alia, contemplates the master plan prepared under any law for the time being in force for development of an area. The plan shall also provide for the stages by which such development shall be carried out. It is evident from the aforesaid definition of master plan that it takes in view any plan prepared even subsequent to the coming into force of the Act. Further, the explanation to Section 6(1), as noticed above, very significantly provides that every person holding vacant land in excess of the ceiling limit at the commencement of the Act shall file a statement before the competent authority and "the commencement of the Act" under clause (2) would be when the land becomes vacant for any reason whatsoever. Therefore, the date of commencement of the Act in a case where the land, which was not vacant earlier, would be the date on which such land becomes vacant land. It, thus, contemplates a situation of land, not being vacant, becoming vacant due to preparation of a master plan subsequent to 17th February, 1976. Further, the provisions of the Act require filing of a statement under Sections 6 7 15 and 16 from time to time as and when land acquires the character of a vacant land.

Obligation to file statement under the Act arises when a person comes to hold any vacant land in excess of the ceiling limit, which date necessarily may not be 17th February, 1976. It would all depend on the facts and circumstances of each case.

Accordingly, we hold that the master plan prepared as per law in force even subsequent to enforcement of the Act is to be taken into consideration to determine whether a particular piece of land is vacant land or not and, to this extent, Atia Begum is not correctly decided."

(Emphasis added)

30. In view of the above, there is no justification for this Court to enforce the law laid down in Atia Mohammadi Begum (supra), which has subsequently been held not to be valid law. Submission made by Sh. Ganguly, that the initial proceedings instituted against the appellant were a nullity as the land could not be covered under the Act, 1976, remains preposterous.

31. Undoubtedly, the Act, 1976, stood repealed by the Act 1999. However, it has no bearing on this case for the reason that proceeding pending in any Court relating to the Act, 1976, stood abated, provided the possession of the land had not been taken from the owner. Therefore, in a case, where the possession has been taken, the repeal of the Act would not confer any benefit on the owner of the land. [Vide *Pt. Madan Competent Authority*[19], *and Mukarram 90*].

32. From the above, the following factual situation emerges:

"(I) The land was declared surplus under the Act, 1976, and acquired in 1979.

(II) Possession of the land was taken in 1979 by the State of Maharashtra and it was handed over to PMT for construction of the residential quarters for the staff.

(III) Appellant has not stated anywhere in the pleadings as to whether any amount/ compensation as provided under the Act, 1976, had been received/accepted by her.

(IV) Appellant, for the reason best known to her, did not file appeal before the Land Tribunal, though Act, 1976 provides for two appeals.

(V) Appellant woke up from deep-slumber only after five years of the judgment of this Court in Atia Mohammadi Begum (supra) and filed revision under Section 34 of the Act, 1976, in 1998.

(VI) The State Government allowed the revision without taking into consideration the point of delay; rather it relied upon its own circulars.

(VII) The State Government did not consider the consequences and particularly the issue of dis- possession of the appellant from the land in dispute in 1978 itself.

(VIII) The judgment in Atia Mohammadi Begum (supra) has been over-ruled by this Court in N.Audikesava Reddy (supra)."

33. Therefore, the law, as exists today, is that the land in dispute could be subjected to the provisions of the Act, 1976, with effect from 17.5.1976, i.e. the date on which the suit land came within the limits of the Municipal Corporation. The Act stood repealed in 1999, but the proceedings pending in any court would stand abated provided the tenure-holder was in possession of the land on the date of the commencement of the Act 1999. The High Court has taken note of the fact that the appellant's revision had been entertained only on the basis of the judgment of this Court in Atia Mohammadi Begum (supra), which stood over-ruled by the subsequent judgment in N. Audikesava Reddy (supra).

34. The aforesaid factual position makes it clear that the appellant is not entitled for any relief whatsoever as per the law, as it exists today. The land once vested in the State cannot be divested. Once the land is vested in the State it has a right to change the user. The appellant cannot be heard raising grievance on either of these issues.

35. Thus, in view of the above, the appeal lacks merit and is accordingly dismissed. No order as to costs.

[1] *AIR 1993 SC 2465*
[2] *AIR 1966 SC 1593*
[3] *AIR 1996 SC 1296*
[4] *AIR 2005 SC 3581*

[5](2010) 3 SCC 621)
[6] AIR 2005 SC 954
[7] AIR 2001 SC 3431
[8] AIR 1993 SC 2517
[9] AIR 1996 SC 1170
[10](1996) 6 SCC 405
[11](2000) 4 SCC 322
[12](2005) 12 SCC 508
[13]AIR 1977 SC 448
[14](1997) 2 SCC 627
[15]AIR 2002 SC 2532
[16](2008) 16 SCC 299
[17](1996) 6 SCC 267
[18] AIR 1989 SC 674
[19] AIR 1983 SC 643
[20](2004) 13 SCC 452