

BOMBAY HIGH COURT

Majas Land Development Corpn

Vs.

State, (Bombay)

Misc. Petn. No. 2266 of 1979

(S.P. Bharucha, J.)

12.01.1983

ORDER

S.P. Bharucha, J.

1. The facts of this petition disclose a scant regard for the citizen's property.

2. On 15th Jan. 1969 a notification was issued under Section 4 of the Land Acquisition Act stating that 95,957 sq. yds. of land near Jogeshwari, of the petitioners' ownership, was likely to be needed for a public purpose, namely, for the use by the Maharashtra Housing and Area Development Authority, the 4th respondent. On 13th Jan. 1972 the land was acquired, a notification under Section 6 being issued. In Aug. and Oct. 1974 notices were issued under Section 9 (3) and (4) of the Act. Hearings commenced in Mar. 1975 and, according to the affidavit of the respondents, the last date of hearing was 6th May 1977. On 12th Nov. 1979 the petitioners filed this petition asking that the State of Maharashtra, the 1st respondent, should be directed to forbear from applying the provisions of the Urban Land Ceiling Act to the land and to forthwith publish an award determining the compensation payable to the petitioners for the land.

3. On 18th December 1979, an affidavit was filed on behalf of the respondents to oppose admission wherein it was stated that "...respondent No 4 has not finally communicated their firm decision to take up these lands and hence the question of compensation after declaration and publishing of the award becomes problematical." On 5th September, 1980, an affidavit in reply to the petition was filed in which it was stated that the 4th respondent was "in the process of reconsidering its need for the land in question and there is a possibility of the said land being withdrawn from acquisition".

4. During the course of the hearing before me today Mr. Parkar, learned Assistant Government Pleader, appearing for the respondents, stated that the land had already been released from

acquisition and he relied in this context upon a document produced from the files of those instructing him. The document is dated 12th June, 1981. It is signed by the Additional Commissioner, Konkan Division. By it the Additional Commissioner has accorded sanction under Section 48(1) of the Act to the withdrawal of the land from acquisition.

5. It is an admitted position that no action has been taken pursuant to this sanction and that the petitioners have not been informed that the land has been withdrawn from acquisition.

6. It is also an admitted position that the proceedings under the Urban Land Ceiling Act in respect of the land have not proceeded beyond the stage of Section 8 thereof. The judgment of the Division Bench of this Court is *Ganesh Rangnath Dhadpale v. Special Land Acquisition Officer (I), Pune¹*, lays down that an inconsistency between the provisions of the Urban Land ceiling Act and the Land Acquisition Act arises only after the competent authority prepares a final statement under Section 9 of the Urban Land Ceiling Act and includes the particular land therein. It lays down that, notwithstanding enquiries under Section 8 of the Urban Land Ceiling Act, the Land Acquisition Act continues to apply to the particular land. Having regard to this position in law and the admitted position that there is no final statement under Section 9 of the Urban Land Ceiling Act in which the land is included, it must be held that the Land Acquisition Act continues to apply to it.

7. It was contended by Mr. Dhanuka that under the provisions of Section 21 of the General Clauses Act the rescinding of a notification under Section 6 of the Land Acquisition Act must take place in the same manner as its original promulgation. In other words, the land could not be withdrawn from acquisition until and unless a notification to that effect was published in the Government Gazette. The Manual of Land Acquisition for State of Maharashtra States (in para. 303-B). "As the land Acquisition Act does not prescribe any formality for withdrawing from acquisition under Section 48, mere cessation of proceedings is sufficient. When Government/Commissioner decides to withdraw, and the decision is communicated to the owner of the land, it should be held that Government/Commissioner has withdrawn from the acquisition...". Even if Mr. Dhanuka is not right in insisting upon the necessity of the publication in the Gazette of a notification withdrawing the land from acquisition, it is patent that there can be said to be no withdrawal of the land from acquisition until and unless such withdrawal is communicated to its owner. In the instant case, the petitioners have not been informed to date that the land has been so withdrawn. In my view, therefore, Mr. Parkar is not right when he states that the land has been withdrawn from acquisition.

8. It is bad enough that compensation for land in respect of which a Section 4 notification was published as far back as 1969 and a Section 6 notification as far back as 1972 should not be determined in 1983. It is much worse that 7 or 8 years after the land has been acquired for the purposes of the Maharashtra Housing Board, the Maharashtra Housing Board should still be considering whether it needs the land. But what takes one's breath away is the fact that nobody should bother to inform the owner of the land for 1 year and 7 months that sanction had been

obtained to withdraw the land from acquisition.

9. In these circumstances, I think it proper that the respondents should be directed to make and publish an award under Section 11 in respect of the land on or before 1st April, 1983 and to make payment of the compensation so awarded on or before 1st May, 1983 and to injunct the respondents from further applying to the land the provisions of the Urban Land Ceiling Act. The respondents shall pay to the petitioners the costs of the

¹1979 Mah LJ 786

petition. Rule accordingly.

Petition allowed.