(2016) 09 MP CK 0009

MADHYA PRADESH HIGH COURT

Case No: Writ Petition No. 8448 of 2006

Bhairo Singh		APPELLANT
	Vs	
State of Madhya Pradesh		RESPONDENT

Date of Decision: Sept. 7, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 17, Section 4

Citation: (2016) 3 JabLJ 255 : (2016) 4 MPLJ 622

Hon'ble Judges: Shri Sanjay Yadav, J.

Bench: Single Bench

Advocate: Smt. Janhavi Pandit, learned Government Advocate, for the Respondent Nos. 1, 3 and 4; Shri Vibudhendra Mishra, Advocate, for the Respondent No. 2; Shri Avinash Zargar, learned counsel, for the Petitioners

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Shri Sanjay Yadav, J. - This common order shall lead to disposal of both the aforesaid writ petitions as the issue raised therein are similar.

2. Invoking urgency clause Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as "1894 Act"), the State Government vide notification under Section 4 read with Section 17, published in daily Dainik Bhaskar dated 4.8.1992 for housing project of Madhya Pradesh Housing Board, notified 2.992 Hectares of land situated at Bagh Mughaliya and 3.725 Hectares of land situated at Bagh Sewaniya, Tahsil Huzur District Bhopal, including the land belonging to the petitioners situated in these two villages, for acquisition. That, an Award was passed on 16.9.1994 in Land Acquisition Case No.4-A-82/91-92. The beneficiary i.e. the Housing Board deposited amount of Rs.41,33,879/-

vide Cheque on 27.8.1994, 31.9.1995, 7.2.1995 and 13.2.1995. Possession of land at Bagh Sewaniya bearing Khasra No.139, 140, 143, 199, 200, 144/1, 145, 146, 147, 149/1, 152, 196, 153, 154, 191, 167, 190, 171, 179, 180, 181, 283, 254, 193, 195, 198, 201, 197, 275, 211, 279, 278, 274, 280, 281, 381, 278, 161 and 165 Total Area 9.30 Acres was given to the beneficiary vide Panchnama dated 16.2.1996. The possession of remaining land of Village Bagh Sewaniya was given to Housing Board on 7.4.1997. The Housing Board, thereafter, developed five blocks and constructed 56 residential units and 12 shops and are now set with the second phase of construction.

3. That, one of the land owner (other than these petitioners) had approached this Court vide Writ Petition No.2764/1999, seeking direction that the respondents be restrained from dispossessing the petitioner from land situated at Village Bagh Sewaniya. The petition was disposed of on 17.12.1999 in the following terms :

By this writ petition preferred under Article 226 of the Constitution of India, the petitioner has prayed for issuing of an appropriate writ restraining the respondents from dispossessing the petitioner from the land situate at Village Bagh Savehia, bearing Patwari Halka No. 20 in the district of Bhopal bearing Khasra No. 146, 148, 147 and 149 as he has purchased the same by a registered sale-deed dated 16.5.94 from the son of Late Badri Prasad.

Counter affidavits have been filed by the State Government as well as M.P. Grih Nirman Board, Bhopal contending inter alia that the aforesaid land was acquired by the State Government by notification dated 18.9.1992 and an award has already been passed on 16.9.1994. Submission of Mr. V.K. Shukla, learned Government Advocate for the State is that the entire land including the disputed Khasras are covered under the aforesaid notification.

Keeping in view the aforesaid stand, it is hereby made clear that the Khasras which find mention in the notification possession can be taken over by the State Government/Housing Board and the area in question which is not covered by the notification shall remain unaffected. With the aforesaid observation and direction, the writ petition stands disposed of.

4. Be it noted that in the said Writ Petition i.e. WP-2764-1999, status quo was also ordered on 27.10.1999.

5. Pertinent it is to note that the land owners were informed for receiving compensation; however, representations were filed stating that since they are in possession, they do not intend to take the compensation but, to retain their possession. It is in the realm of these facts that the petitioners have remained in possession over the land in question.

6. Present writ petitions have been filed seeking direction that the respondents be restrained from interfering with the possession over the land in question and a further direction to release the land in question from the acquisition.

7. Question is that, once in furtherance to invocation of urgency clause and the Award having been passed and the possession of land acquired is given, resulting in vesting of land in the Government /beneficiary, whether it will be open for the erstwhile land-owners to seek mandamus that their possession be not disturbed as they have chosen not to take compensation and retain possession and the Government/beneficiary should withdraw from the acquisition.

8. In this context, reference can be had of a decision in **Lt. Governor of H.P. v. Avinash Sharma (1970) 2 SCC 149** which, in the considered opinion of this Court, clinches the issue, wherein it is held :

"8. ... that after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17(1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification."

9. The decision in Avinash Sharma (supra) has been followed by a three-Judge Bench in **Satendra Prasad Jain v. State of U.P. (1993) 4 SCC 369**, wherein their Lordships were pleased to hold :

"15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisition under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

10. Though petitioners have relied on the decision in **Laxmi Devi v. State of Bihar (2015) 10 SCC 241**, wherein these two judgments are distinguished in the following terms :

"25. The plea before us from the Appellants is that the land should revert to them under Section 11A, since an Award under Section 11 has still not been made despite the passage of almost three decades from the date of the subject Notification. This Court has continuously held that once land has vested in the State, the question of re-vesting its possession in the erstwhile landowners is no longer available as an option to the State. This legal position was enunciated close to a half century ago in Avinash Sharma and has been subsequently reiterated in numerous judgments Paragraph 4 of the aforementioned Judgment is worthy of reproduction, and its reading will bear out that what was primarily in the contemplation of this Court was the possession of the land in contradistinction to its title.

"4. In the present case a notification under Section 17(1) and (4) was issued by the State Government and possession which had previously been taken must, from the date of expiry of fifteen days from the publication of the notice under Section 9(1), be deemed to be in the possession of the Government. We are unable to agree that where the Government has obtained possession illegally or under some unlawful transaction and a notification under Section 17(1) is issued the land does not vest in the Government free from all encumbrances. We are of the view that when a notification under Section 17(1) is issued, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), the possession previously obtained will be deemed to be the possession of the Government under Section 17(1) of the Act and the land will vest in the Government free from all encumbrances".

Ordinarily, possession of land can only be taken after the expiry of fifteen days from the publication of the notice envisaged in Section 9. We mention this for the reason that the Act enables, in this statutory sequence of events, the owner of the land to approach the Court in a challenge to the invocation of the urgency provisions. Ubi jus ibi remedium, every grievance has a remedy in law, is a legal maxim which is immediately recalled. We must hasten to add that the apparent infraction of the provisions of Section 9 of the Act do not arise in the present case because of the Bihar Amendment of Section 17.

26. This is also in line with a plain reading of Section 17(1), which states that "once possession of the land is taken by the Government under Section 17, the land vests absolutely in the Government, free from all encumbrances". In Section 48(1) the taking over of the possession of the land is of seminal significance in that the provision succinctly states that "the Government shall be at liberty to withdraw from the acquisition of any land the possession of which has not been taken". The next sub-Section covers calculation of compensation for the aborted occupation.

26.1 The same position came to be reiterated in Satendra Prasad Jain by a Three Judge Bench of this Court. The acquisition proceedings including the exclusion of Section 5A had obtained the imprimatur of the Allahabad High Court; the urgency and public purpose had received curial concurrence. Possession of the land was taken by the State from the landowners. Previously, the Special Leave Petition filed by the landowners had been

dismissed by this Court. Ironically, the subsequent stance of the State was that the acquisition of land under the urgency provisions was required to be set aside for the reason that the State had failed to pass an Award under Section 11 within two years and had also failed to pay eighty per cent of the estimated compensation required under Section 17(3A). Whilst the State endeavoured to withdraw from the acquisition, the erstwhile landowners opposed it. This Court directed the State "to make and publish an award in respect of the said land within twelve weeks from today". The above mentioned discussion bears out that this Court was concerned only with the issue of the land being returned by the State to the erstwhile owner. It does not go so far as to limit or restrict the rights of landowners to fair compensation for their expropriated property, as that is a Constitutional right which cannot be nullified, neutralised or diluted.

26.2 We think it justified to again refer to the opinion in Satendra Prasad Jainthat - "Section 11A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of eighty per cent of the estimated compensation."

26.3 The second issue, one that we feel must be kept in mind in the interpretation in the law laid down by this Court, is the factual matrices involved in both Satendra Prasad Jain and Avinash Sharma. In both these precedents, as well as in innumerable others that have relied upon them, the Government''s attempt was to misuse its own omissions to achieve its own oblique purposes. It was in this context that this Court declined to accede to the pleas of the Government. This Court poignantly repelled the State''s attempt to nullify the acquisition on the predication of its noncompliance with Sections 16 and 17(3A). The judicial intent was not to cause any loss to landowners, but to protect them. The pernicious practise that was becoming rampant, that is to make partial compliance with the statute and to follow the acquisition procedure in a piecemeal manner, and then to argue that its own lapses rendered its acquisition illegal, was roundly repulsed. Although this strictly constitutes obiter, we think it appropriate to clarify that where the landowners do not assail the acquisition, it may be open to them to seek a mandamus for payment to them, after a reasonable period, of the remaining compensation, which will thereupon metamorphose from a mere estimation to the actual compensation for the expropriation.

27. The Constitution Bench of this Court had to interpret Section 17 in **Raja Anand Brahma Shah v. State of U.P. (1967) 1 SCR 373**, but in somewhat different circumstances. The State proposed to take over large tracts of land "for limestone quarry" on urgency basis; by virtue of Section 17(4), Section 5A was held not to be available. The Collector of Mirzapur was directed by the Notification under Section 17(1) of the Act to take possession of the "waste or arable land" even in the absence of an Award being published. The Constitution Bench held that the limestone quarries belonging to the Appellant, which were proposed to be acquired, could not possibly be conceived of or categorised as "waste or arable land, the acquisition, inasmuch as it proceeded under

Section 17, could not pass muster of law. What is very pertinent for the present purposes is that the Constitution Bench had declined issuance of a mandamus commanding the State to restore possession of the land to the Appellant, not because this was inconceivable or impermissible in law or because of any provisions in the L.A. Act, but rather because the lands had validly vested in the State of U.P. under the U.P. Zamindari Abolition and Land Reforms Act, 1951. The conundrum of the restoration of the land had directly arisen before the Constitution Bench and since it declined the prayer for other reasons, it follows that there is no constraint or impediment for the grant of an appropriate Writ in this regard. This will fortify our distillation of the ratio decidendi of Satendra Prasad Jain which is circumscribed and restricted to the extent that the State is not empowered to withdraw from an acquisition once it has taken possession of the said lands.

28. We do, however, recognise that Satendra Prasad Jain has been interpreted more broadly in the past. In **Allahabad Development Authority v. Naziruzzaman (1996) 6 SCC 424**, **General Manager, Telecommunication v. Dr. Madan Mohan Pradhan 1995 Supp (4) SCC 268**, and **Banda Development Authority, Banda v. Mota Lal Agarwal (2011) 5 SCC 394**, this Court has dismissed the landowners'' challenges to the respective acquisitions on the basis of Avinash Sharma and Satendra Prasad Jain. It is pertinent to note that all three of these cases were brief in their explanations of Avinash Sharma and Satendra Prasad Jain, and did not examine their rationes decidendi, their innate contradictions, their intentions or their consequences at any length. We thus feel it appropriate to rely on our own detailed exploration of these cases, as opposed to simply placing reliance on the largely contradictory case law that has developed over the years. It was for this reason that we had revisited the curial concept of ratio decidendi.

29. The scenario before us depicts the carelessness and the callousness of the State, quite different from the situation in Satendra Prasad Jain and Avinash Sharma. The Appellants herein are being denied just and fair compensation for their land in proceedings which commenced in 1987, despite the directions of the High Court passed as early as in 1988 to pass an award within four months. The raison d''etre behind the introduction of Section 11A was for the landowners to have a remedy in the event of an award not being passed expeditiously. If Satendra Prasad Jainis interpreted to mean that Section 11A will not apply to any acquisition under the urgency provisions, landowners such as the Appellants before us will have no protection, even if they are not paid full compensation for their land for decades. This cannot be in keeping with the legislative intent behind this Section. Furthermore, keeping empirical evidence in sight, we make bold to opine that circumstances require this Court to reconsider its view that even if the stated public interest or cause has ceased to exist, any other cause can substitute it, especially where the urgency provisions have been invoked."

11. In Laxmi Devi (supra), the Supreme Court was concerned with the matter, wherein the State of Bihar while invoking the urgency clause Section 17 of 1894 Act way back in 1987 kept the land in question unutilized. This fact is borne out from the opening paragraph :

"The legal nodus that we are called upon to unravel in this Appeal is whether the Land Acquisition Act, 1894 (L.A. Act for brevity) as amended from time to time, requires an Award to be passed even in respect of lands expropriated by the State pursuant to the exercise of special powers in cases of urgency contained in Section 17 thereof. It is indeed ironical that what was, as far back as in 1987, perceived as an imperative, urgent and exigent necessity, justifying the steamrolling of the rights of citizens, has proved substantially to be a fallow and ill-conceived requirement even after the passage of three decades; till date, tracts of the acquired land remain unutilized; the initially declared purpose of construction of residential quarters for State officials having novated to portions of the land being used as helipads for "State Dignitaries"."

12. Present is not the case that the land acquired is not utilized. On the contrary, as the facts are unfurled that after taking over of the possession, the Housing Board has developed the land and raised residential blocks, with more residential blocks in the offing.

13. The contention that the petitioners are still in possession over the land in question is of no avail, as the land stood vested with the State/beneficiary. In this context, as to whether the land owners have any right over the property, reference can be had of a decision in **Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab (1996) 4 SCC 212**, wherein it is held :

"3. Thus, the Government, by virtue of State Amendment is empowered to exercise the urgency clause under sub-section (4) of Section 17 and to dispense with the enquiry under Section 5-A of the Act. Shri Parekh has contended that mere existence of the power is not sufficient. The urgency should be such as would not brook delay of 30 days in conducting the enquiry contemplated under Section 5-A. In this case, allotment of the house sites to the poor is not such an urgency which cannot wait for conducting the enquiry. Therefore, exercising the power under Section 17(4) is bad in law. He seeks to place reliance on the decision of this Court in **Naryan Govind Gavate etc. v. State of Maharashtra (1977) 1 SCR 763]**. In a recent decision in **Chameli Singh & Ors.etc. v. State of U.P. (1996) 1 Scale 101**, this Court considered the entire case law and held that providing house sites to the poor is an urgent necessity and exercise of the power under Section 17(4) to dispense with the enquiry under Section 5-A would be justified. The reasoning of this Court in Gavate''s case also was considered and it was held that exercising the power under Section 17(4) cannot be struck down when the Government was of the opinion that it urgently required the possession of the land for providing house sites to the poor.

4. It is seen that the entire gamut of the acquisition proceedings stood completed by April 17, 1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchnama in the

presence of Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

5. Under these circumstances, merely because the appellant retained possession of the acquired land, the acquisition cannot be said to be bad in law. It is then contended by Shri Parekh that the appellant-Institution is running an educational institution and intends to establish a public school and that since other land was available, the Government would have acquired some other land leaving the acquired land for the appellant. In the counter-affidavit filed in the High Court, it was stated that apart from the acquired land, the appellant also owned 482 canals 19 marlas of land. Thereby, it is seen that the appellant is not disabled to proceed with the continuation of the educational institution which it seeks to establish. It is then contended that an opportunity may be given to the appellant to make a representation to the State Government. We find that it is not necessary for us to give any such liberty since acquisition process has already been completed."

14. Decision relied on by the petitioner in **State of Uttar Prasad v. Hari Ram (2013) 4 SCC 280** to buttress the submissions regarding the procedure adhered to in acquiring the land that the same is not an acquisition in the eyes of law, is of no assistance to the petitioners, as the Court was considering the issue as to whether the deemed vesting of surplus land under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 would amount to taking de facto possession depriving the land-holders of the benefit of saving clause under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, in the context of Uttar Prasad Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters) Directions, 1983 (directions issued under Section 35 of 1976 Act).

15. In the case at hand, no Rule or Regulation framed in the Land Acquisition Act, 1894 has been commended at, as would lend support to the contention that the possession of land must be taken in particular manner.

16. Since the land in question has been taken possession of long back in the year 1996-97 and that the Housing Board has already developed the land and raised construction thereover, with more housing scheme in the offing, the relief sought by the petitioner cannot be given.

17. Consequently, both the petitions fail and are hereby dismissed. No costs.