

(1983) 01 BOM CK 0038

Bombay High Court

Case No: Misc. Petition No. 2266 of 1979

Majas Land Development
Corporation and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision: Jan. 12, 1983

Acts Referred:

- Land Acquisition Act, 1894 - Section 48
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 8, 9

Citation: AIR 1983 Bom 188

Hon'ble Judges: S.P. Bharucha, J

Bench: Single Bench

Advocate: D.R. Dhanuka and M.B. Rele, for the Appellant; S.S. Parkar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The facts of this petitioner disclose a scant regard for the citizen's property.
2. On 15th Jan. 1969 a notification was issued under S. 4 of the Land Acquisition Act stating that 95,957 sq. yds. of land near Jogeshwari, of the petitioner ownership, was silkily to he need for public likely, 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 S. 6 being issued. In Aug. and Oct. 1974 notice were issued under S. 9(3) and (4) of the Act. Hearing commenced in Mar. 1975 and, according to the affidavit of the respondent. the last date of hearing was 6th May 1977. On 12th Nov. 1979 the petitioner filed this petitioner asking that the state of Maharashtra, the 1st respondent, should the provisions of the Urban Land Ceiling Act to the land and to forthwith public an award determining the compensation payable to the petitioner for the land.

3. On 8th December 1979, an affidavit was filed on behalf of the respondent to oppose admission wherein it was stated that ".....respondent No. 4 has not finally communicated their firm decision to taken up these lands and hence the question to compensation after declaration and publishing of the award become problematical". On 5th September, 1980, an affidavit in reply to the petitioner 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"in the process of reconsidering its need for the land in question and there is a possibility of the said land being withdrawn from acquisition".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 respondent stated that Tanubai land had already been released form acquisition and he relied on this context upon a document produced form the files of those instructing him. The document is dated 12th June, 1981. It is singed by the Additional Commissioner. Konkan Division. By it the Additional Commissioner has accorded sanction u/s 48(1) of the Act to the withdrawal of the land form acquisition.

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

6. It is also admitted position that the proceeding 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), Pune 1979 Mah LJ. 786, 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 u/s 9 of Urban Land Ceiling Act and includes the particular land therein. It lays done that, notwithstanding inquiries under S. 8 of the Urban Land Ceiling, the Land Acquisition Act continues to apply to the particular land. having regard to this position in law which and the admitted possession that there the land is included, it must be held that the Land Acquisition Act continue 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 the notification u/s 6 of the Land Acquisition Act must take place in the same manner as it 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 the State of Maharashtra states (in para 303-B). "As the land Acquisition Act does not prescribe any formality for withdrawing from acquisition u/s 48, mere cessation of proceedings is sufficient, When Government/Commission decided 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 withdrawing of the land for acquisition until and unless such withdrawals communicated to its owner. In the instant case, the petitioner has 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 the said 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 made 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 respondent should be 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 respondent from further applying to the land the provisions of the Urban Land Ceiling Act. The respondent shall pay to the petitioner the costs of the petitioner. Rule accordingly.

10. Petition allowed.