

(1988) 04 BOM CK 0062

Bombay High Court

Case No: Writ No"s. 1247 of 1985 and 413 of 1986

Dhulgonda Dada Patil and etc.

APPELLANT

Vs

Special Land Acquisition Officer
No. 15, Kolhapur and Others

RESPONDENT

Date of Decision: April 22, 1988

Acts Referred:

- Constitution of India, 1950 - Article 14, 245, 246
- Land Acquisition Act, 1894 - Section 5, 5A
- Maharashtra Resettlement of Project Displaced Persons (Amendment and Validation) Act, 1985 - Section 2, 3, 4(2)(b), 5
- Maharashtra Resettlement of Project Displaced Persons Act, 1976 - Section 13, 14, 15, 16

Citation: AIR 1989 Bom 286

Hon'ble Judges: Mookerjee, C.J; Dharmadhikari, J

Bench: Division Bench

Advocate: Bhimrao N. Naik, S.S. Pandit and G.R. Rege, for the Appellant; M.V. Paranjape and M.B. Mehee, A.G.P., for the Respondent

Judgement

Mooketjee, C.J.

In these writ petitions so also in number of other writ petitions filed in this Court, the vires of the Manarashtra Resettlement of Project Displaced Persons (amendment and Validation) Act 1985 (Maharashtra Act No. 13 of 1985) (hereinafter for brevity"s sake called the Amendment and Validation) Act , 1985, has been challenged. Some of these writ petitions also involve other points which may have to be given separate consideration. In view of its importance we have first heard the learned Counsel on both sides regarding validity of the said Amendment any validation Act . 1985. We are grateful to the learned Counsel for both sides who have made arguments fairly and have given assistance to us in deciding the question in controversy.

2. The statement to the Maharashtra Ordinance No. 6 of 1985 which was later on replaced and re-enacted as Maharashtra Act 13 of 1985, contains background and circumstances under which the said Amendment and Validation Act, 1985 came to be enacted. The Maharashtra Resettlement of Project Displaced Persons Act, 1976 (Maharashtra Act 41 of 1976) (hereinafter called the principal Act) had been enacted to provide for resettlement of certain persons displaced from the lands which were acquired for the project of public utility and for matters connected therewith. The scheme of the principal Act was briefly as follows:

3. Section 10 of the principal Act contemplated resettlement of displaced persons on lands in the benefited zone or in other villages or areas (being villages and areas specified by the State Government by an order in writing for that purpose) in accordance with the provisions of the Act and the Rules made thereunder. Incidentally, as yet, no rules under the principal Act have been enacted. Under sub-sec. (I) of S.11 of the principal Act, the State Government may declare in the Official Gazette that the provisions of the Act shall apply in relation to the Project specified in the notification, and thereupon the provisions of the Act shall apply to such project. The notification is required to specify the village or areas which are likely to be in the affected or the benefited zone. The Full Bench of this Court in the case of *Ganpat Balwant Powar v. Spl. Land Acquisition Officer No.7, Krishna Dhom Project, Wai, District Satara* reported is 1984 Mh LJ 752: AIR 1984 Bom 382 construed some of the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 as the said statute stood at the relevant time. The Full Bench further held that the procedure prescribed under the said Resettlement Act became applicable only when a declaration is made under s.11(I) of the Act and the provisions of the said Act shall be applicable to the project. Such a declaration followed only after the formation of the opinion of the State Government that it was necessary or expedient in the public interest to make such a declaration. The Full Bench had overruled the contrary view expressed by Masodkar and Ginwalla, JJ, in the case of *Pandurang Akaji Dawale v. State of Maharashtra* in Special Civil Application No. 915 of 1977 decided on 17th/18th Oct., 1977. We will proceed hereafter to refer to some other parts of the Full Bench decision in *Ganpat Balwant Pawat and others case (supra)* wherein the views expressed by the other Division Bench decision in the case of [Gulab Shankar Walve and Vs. The Special Land Acquisition Officer and Another](#), were approved. S. 13 of the principal Act required the Resettlement Officers to make assessment of the extent of land from which person who had been displaced and the extent of land which might be available for grant to displaced persons and also to collect certain other information s.14 of the principal Act provided for provisional declaration of affected zone and benefited zone. The final declaration of the affected zone and benefited zone was required to be made by the State Government in accordance with S.15 of the said Act, s. 16 of the said Act dealt with the powers to acquire lands for the purpose of the said Act. S.17 prescribed the extent of land to be granted to the displaced persons according

to the provisions contained in the Schedule to the said Act . Ss. 19 to 21 dealt with the preparation and publication of the scheme of settlement.

4. The statement which accompanied the Maharashtra Ordinance No. 6 of 1985 (which was later replaced by Maharashtra Act 13 of 1985) had referred to the aforesaid decision of the Division Bench in the case of Gulab Shankar Walve's case (surpa). The said Division Bench inter alia held that the Maharashtra Resettlement of Project Displaced Persons Act , 1976 contemplated acquisition of the required land either by negotiation under S.16(I) or by compulsory acquisition under S.16(2) thereof. According to the Division Bench before taking any steps for acquisition under s.16 of the said Resettlement Act , provisions of Ss. 13 to 15 of the said Resettlement Act should be complied with. Land to be acquired under sub-sec. (2) of S. 16 could not be ascertained till the steps contemplated under Ss. 13 to 15 were taken. The full Bench in the case of Ganpat Balwant Pawar's case AIR 1984 Bom 382 (surpa) in para 13 of their judgment had also held that it is only after the steps mentioned in Ss. 13 to 15 i.e. preparation of assessment report, provisional declaration and the final declaration steps could be taken for acquiring declaration steps could be taken for acquiring the land for resettlement of project displaced persons.

5. As originally enacted S. 14 of the principal Act provided in sub-sec. (2) thereof that objections and suggestions were to be invited within a prescribed period. Similarly under the unamended sub-sec. (I) of S. 15 of the principal Act , the State Government after considering the objections and suggestions received within the period prescribed and after giving reasonable opportunity to the persons affected by that notification to be heard and after making such further inquiry as it might think fit, was entitled to make the final declaration of affected and benefited zones. Before the Division Bench which heard the case of [Gulab Shankar Walve and Vs. The Special Land Acquisition Officer and Another](#), Government had given an undertaking to the effect that the notifications issued under Ss. 4 and 6 of the Land Acquisition Act and those issued under Ss. 14 and 15 of the Maharashtra Resettlement of Project Displaced Persons Act would be withdrawn, in case provisions of Ss. 13 to 15 had not been followed strictly. Thereupon the Division Bench had allowed the withdrawal of the writ petitions. In the statement accompanying the Ordinance No. 6 of 1985 it was inter alia stated that although the State Government did not give personal hearing to the persons concerned, the final declarations under s.15 had been made after considering the report of the Collector and Deputy Director of Resettlement of (Land) in respect of the objections or suggestions, if any, received by him and further proceedings for acquisition of the lands covered by the areas included in the final declarations made under s.15 were initiated (and in some cases completed) only after satisfaction of the State Government that the lands acquired or to be acquired were needed for carrying out the purposes of the Act . It was further stated that the Government considered it expedient to simplify and streamline with retrospective effect, the procedure under Ss. 14 and 15 for making

declarations there under, and also to provide for validation of the final declarations made under s.15, the land acquired or was in the process of acquisition for the purposes of the Act and the acts, etc. this appears broadly to be the legislative history behind enacting the Ordinance No. 6 of 1985, which was later on, as already stated, replaced by Maharashtra Act NO. 13 of 1985.

6. Mr. Bhimrao N. Naik, learned Counsel appearing for and on behalf of the petitioners inter alia submitted before us that the said amendment and Validation Act was bad in law or ultra vires because it purports to validate acquisition of lands without amending the provisions of the principal Act substantially and/or without having effected any significant changes in the principal Act. We are unable to accept the submission of Mr. Naik that the Amendment and Validation Act clearly nullified the effect of the ratio laid down by the Division Bench decision in the case of the Division Bench decision in the case of [Gulab Shankar Walve and Vs. The Special Land Acquisition Officer and Another](#). We may point out here that the reported decisions of this Court referred to above, did not strike down any of the provisions including Ss. 14 and 15 of the principal Act as ultra vires. In the reported decisions competence of the Maharashtra Legislature over the subject matter of the legislation was not questioned. In fact the said point of competence was not even noted before us, except in the manner indicated hereinafter. The reported decisions of this Court did not also hold that the legislation in questions suffered from any defect or infirmity which made it inoperative or inapplicable. In substance the Division Benches in [Gulab Shankar Walve and Vs. The Special Land Acquisition Officer and Another](#), and Ganpat Balwant Pawar AIR 1984 Bom 382 (surpa) had indicated the sequence or the order in which the different provisions contained in chapter 3 of the Resettlement Act and in particular Ss. 13 to 16 were to be applied. Before initiating acquisition proceedings in terms of s.16 the condition precedent to be complied with were the fulfilment of the requirements relating to the assessment, provisional and final declarations under Ss. 13 to 15 of the said Resettlement Act. The proceedings for acquisition initiated under S.16 would be faulted, if the said provisions relating to assessment, provisional and final declarations were not first done. Recently the Supreme Court in [Utkal Contractors and Joinery \(P\) Ltd. and Others Vs. State of Orissa](#), has summarised the law relating to the validating and amending Legislations. In their judgment in M/s. Utkal Contractors" case (supra) all the earlier reported decisions of the Supreme Court including the decision in the case of I.,N. Saksena v. State of Madhya Pradesh, AIR 1976 SC 2250, UPON WHICH Mr. Naik placed strong out that the Legislature may at any time in exercise of plenary powers conferred on it by Arts. 245 and 246 of the Constitution render a judicial decision in effective by enacting a valid one. The Supreme Court in para 14 of the said judgment in M/s. utkal Contractors case (supra) had observed:

"14. The next question to be considered is whether the State while purporting to amend the Act has encroached upon the judicial power and set aside the binding

judgment of this Court. We do not think that Mr. Nariman was justified in contending so. The principles have been well established in a string of decisions of this Court, and we may briefly summarise as follows:

"The legislature may, at any time, in exercise of the plenary power conferred on it by Arts. 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That, of course, is subject to other constitutional limitation. The rendering ineffective of judgments or orders of competent Courts by changing their basis by legislative enactment is a well known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. the legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision. [Hari Singh and Others Vs. The Military Estate Officer and Another](#) , [The Government of Andhra Pradesh and Another Vs. Hindustan Machine Tools Ltd.](#) , [I.N. Saksena Vs. State of Madhya Pradesh](#), and [Misrilal Jain and Another Vs. State of Orissa and Another](#) ,."

In the instant case by enacting the Amendment and Validation Act , the Maharashtra Legislature did not directly overrule, reverse or set aside any judicial decision by this Court regarding the substantive effect of the provisions contained in Chapter 3 of the Resettlement Act . in other words there has been no express encroachment upon the judicial power. Section 2 of the Resettlement Act i.e., Maharashtra Act 13 of 1985 with retrospective effect substituted sub-sec. (2) of S.14 of the Maharashtra Resettlement of Project Displaced Persons Act ,. 1976. Under the unamended sub-sec. (2) of S.14 in the provisional declaration the State Government itself was required to invite objections and suggestions for inclusion of any land in the area referred thereto. The said original sub-sec. (2) was substituted by sub-s. (2) of S.14 which has provided that the declaration made under sub-sec. (I) of S.14 shall call upon the persons interested in the land to make objections, if any, to and suggestions for, the inclusion of any land in the area referred to in Cl. (a) or Cl. (b) of sub-s. (I) and send them to the collector and Deputy Director of Resettlement (land) within a period of not less than thirty days as may be specified in the notification. In other words the substituted sub-sec. (2) of s.14 without totally dispensing with the provisions for filing objections and suggestions now provide for their consideration and disposal by the Collector and the Deputy Director of Resettlement. It only altered the forum for submission of objections and suggestions and their disposal by substituting S.14(2) of the Act . sub-Section (I) of S. 15 of the principal Act was also changed.

7. Under the amended sub-sec. (I) of s.15 of the Act , the Collector and the Deputy Director of Resettlement are required to forward objections and suggestions if any, received by them under sub-sec. (2) of s.14, together with their report in respect

thereof to the State Government, and on considering the report and the objections and suggestions, if any as also the suggestions if any received by it under sub-sec. (3) of S.14, the State Government is now required to make the final declaration after making such further enquiry as it may deem fit and proper. We are unable to accept the extreme contention of Mr. Rege who also appeared before us on behalf of some of the petitioners that the provisions of sub-sec. (2) of S.14 and sub-sec. (I) of s.15 of the amended Act , totally dispense with the necessity of consideration of claims and objections. We have already pointed out that under sub-sec. (2) of S. 14 read with sub-sec. (I) of S.15 as amended by Maharashtra Act 13 of 1985 still retain provision for filing claims and objections and their disposal and that the forum for filing them and the prescribed. Therefore we are not prior hearing in the matter of adversely affecting property rights is totally taken away. We may also point out that by reason of this Court upon s.16 of the principal Act upon completion of stages from Ss. 13 to 15 of the principal Act , proceedings for acquisition of land had to be initiated. In case the land is to be acquired under the provisions of the Land Acquisition Act , 1 of 1894, the provisions contained in part II of the said Act including those contained in Ss. 4, 5, and 5A have to be complied with. Under sub-sec. (I) of S.5A any person interested in any land which has been notified under s.4 sub-sec. (I) as being needed or likely to be needed for a public purpose or for a Company may within the prescribed time file objections to the acquisition of the land or of any land in the locality as the case may be. We need not set out in extenso rest of the provisions of the s. 5A of the Land Acquisition Act relating to hearing and disposal of the objections. Therefore with respect to the learned Counsel for the petitioners we are unable to accept their contention that by reasons of amendments effected in Ss. 14 and 15 of the Resettlement Act , the principles of natural justice have been breached by totally depriving the persons affected opportunity of hearing as to the need for their lands.

8. We may conclude out consideration of the amended provisions of Ss. 14 and 15 of the Resettlement Act by observing that it is well recognised that the principles of natural justice cannot be considered to be a straight-jacket formula. Our attention has been drawn to the recent decision of the Supreme Court in [R.S. Dass Ors. Vs. Union of India \(UOI\) and Others](#), thereof this principle was reiterated by the Supreme Court by observing that rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and the background of statutory provisions, nature of the right which may be affected and the consequences which may entail, its application depends upon the facts and circumstances of each case. In the instant case we have already pointed out that even after the amendments effected under Ss. 14 and 15 of the principal Act , submission of claims and suggestions and their consideration have been retained. Under sub-sec. (3) of S. 14 of the Resettlement Act the Commissioner or the Deputy Director of Resettlement or Resettlement Officers are also entitled to make suggestions relating to the notifications under Ss. 14 and 15 of the said Act . There

are further safeguards inasmuch as persons interested may object under S. 5A of the Land Acquisition Act as regards the existence of public purpose or need for acquiring a particular land. Thus after decisions relating to the scope and effect of S.s 13 to 16 of the Resettlement Act were rendered by this Court, the State Legislature had competency to amend the provisions of sections relating to filing and disposal of claims and suggestions contained in Ss. 14 and 15 with retrospective effect and the same cannot be held to be transgression upon the judicial powers.

9. Mr. Naik appearing on behalf of the petitioners had also urged that the amended provisions were bad because they were unreasonable and violative of Art. 14 of the Constitution. We regret, cannot accept this contention for the reasons already indicated above by us. A legislation which does not totally abrogate right to file claims and/or suggestions and/or objections but modifies the proceedings relating to them cannot be held to be arbitrary or irrational. There is also no basis for the contention faintly urged by Mr. Naik that the amendment effected amounted to fraud on the legislative power.

10. Now we proceed to consider S. 4 of the Amendment And Validation Act . Under sub-s (I) of S. 4 of the Amendment Act , the final declarations made under S. 15 (3) of the principal Act before the commencement of the said Amendment and Validation Act , were validated and cured. We have also noticed that the said validation covers cases where declarations under s.15 have been made but they were not in compliance with the requirements of the unamended Ss. 14 and 15 of the said Act . sections 2 and 3 of the Amendment and Validation Act with retrospective effect amend the provisions regarding filing and disposal fo claims and objections contained in sub-s. (2) of S.14 and sub-s. (I) of S.15 and it was only logical that the declarations made under S.15 of the Principal Act prior to coming into force of the said Amendment was Validation Act , would no longer be allowed to be challenged on the ground that the said declarations were made without complying with unamended Ss. 14 and 15 of the principal Act . We may also emphasise use of the expression in the later part of S.4(I) of the Amendment Act that "no such declaration shall be called in question in any court of law merely on the ground that the provisions of Ss. 13 and 14 of the principal Act have not been complied with, in part or in whole, or that an opportunity of being heard was not given to the persons affected by such declaration or that no further enquiry was made by the State Government, before making such declaration". Other grounds, if any, upon which a challenge could be made in respect of declarations under s.15 of the principal Act were not taken away. Clauses and sub-clauses of S.(2) of S.4 of the Validation and Amendment Act also validate the actions taken or things done (including any order made, agreement entered into, or any notice or notification published) in connection with such acquisition and the grant or distribution of such land for resettlement of any displaced person on the grounds set out in sub-clauses (I) and (ii) of Cl. (a) of S.4(2), of the Amendment Act . We are of the view that the said validation was necessary consequent, as already observed, upon the retrospective

amendment of Ss. 14 and 15 of the principal Act . All actions taken before the amendment of the said two sections for acquisition of land and for grant and distribution of land for resettlement of displaced persons could not longer be challenged on the ground that the provisions of the original unamended Ss. 14 and 15 of the principal Act regarding disposal of objections or enquiry had not been complied with. Section 4(2) Cl. (b) similarly validates proceedings under S.16 of the principal Act and the resettlement of the Amendment and Validation Act , 1985. The Legislature was competent to decide whether the said proceedings commenced and/or concluded for resettlement of project displaced persons ought to be saved from attack on the ground that the declarations under S.15 were not in accordance with the unamended Ss. 14 and 15. That would be a matter falling within the filed of the Legislative wisdom and the said validation was necessary to avoid hardship and inconvenience which might be causes to displaced persons resettlement. We do not agree with the submissions made on behalf of the petitioners that the Amendment and Validation Act did not endeavour to remove the causes for ineffectiveness or infirmity of the declarations made under s.16 prior to the coming into force of the said Amendment and Validation Act . in fact while dispensing with and modifying some of the requirements of the original sub-s. (2) of S. 14 and sub-s. (I) of S.15, the Legislature has taken care to cure the defects if any in the declaration made under s.15 and also in the Land Acquisition proceedings which had commenced without completion of all the stages contemplated by Ss. 13 to 15 of the principal Act . We have already pointed out according to the Division Bench decisions all the stages of Ss. 13 to 15 were to be completed before the State Government could compulsorily acquire lands under S. 16(2) of the Resettlement Act . Section 4(2) (b) of the Amendment Act saves land acquisition proceedings from being impugned on the ground of defect in the declarations made under S.16 of the principal Act . We have noted that before acquiring lands under the Land Acquisition Act for resettlement of project displaced persons opportunity of being heard have to be afforded under S.5A of Land Acquisition Act to the persons interested in the lands proposed to be acquired. Persons interested are free to object inter alia on the ground that the lands notified are not needed or likely to be needed for any public purpose. Enough safeguards still remain in case objections are filed about the purpose for acquiring the lands under s. 16 of the Resettlement Act read with the provisions of Land Acquisition Act . for the foregoing reasons we up hold the validity of the Maharashtra Resettlement of Project Displaced Persons (Amendment and Validation) Act , 1985 (Maharashtra Act 13 of 1985). Other points, if any, raised in the writ petitions will be separately heard and disposed of according to law. In view of the statement made by Shri Mehre learned A.G.P. that the lands involved in writ petition No. 1247 of 1985 are being released from acquisition, Rule is discharged in the said writ petition with no order as to costs.

11. Order accordingly.