

PETITIONER:
ADMINISTRATION OF DAMAN AND DIU & ANOTHER

Vs.

RESPONDENT:
SHRI MOHANLAL LALBHAI DESAI & ANOTHER

DATE OF JUDGMENT: 18/11/1999

BENCH:
M.B.Shah, S.S.ahmad

JUDGMENT:

Shah, J.

This appeal by special leave is filed against the judgment and order of the High Court of Bombay, Panaji Bench (Goa) dated 11.3.1987 in Writ Petition No.162 of 1985 whereby the High Court allowed the writ petition filed by respondent No.1 and directed the appellants to take up acquisition proceedings in respect of respondents land in question and to determine and pay just compensation under the Land Acquisition Act.

Admittedly, respondent No.1 was in occupation of agricultural land admeasuring 1,04,000 sq. meters bearing Entry Nos.457 and 458 (new Survey No.326) situated in the village Kachigam of Daman District. On a proposal of the appellants, respondent No.1 agreed to hand over possession of the said land under a Kabja receipt dated 26.6.1968. It was made clear that the possession is given subject to respondent No.1 being paid compensation in terms of and according to laws relating to acquisition in force. The case of respondent No.1 is that he was not paid compensation. Sometime in the year 1968, the Collector of Daman issued a show cause notice bearing No.4363 dated 16.10.1968 calling upon respondent No.1 to show cause as to why the said land be held not vested in Government on the ground that the same was grass or pasture land. That notice was challenged by filing Writ Petition before the Judicial Commissioner. Writ Petition was finally allowed as the statement was made on behalf of appellants that show cause notice issued by the Collector had been withdrawn. Based on the said statement the notice was quashed by the Judicial Commissioner. Again, on 11.10.1976 the Mamlatdar of Daman issued notice to respondent No. 1 calling upon him to show cause why it should not be declared that the land had vested in the Government, pursuant to the provisions of the Daman (Abolition of Proprietorship of Villages) Regulation, 1962 (for short the Regulation). After recording the evidence led by the parties (including on behalf of the State by the Circle Inspector), the Mamlatdar by his order dated 30.9.1983 withdrew the said notice and dropped the further proceedings for the reason that he found respondent No.1 was cultivating the land at the relevant date, and, therefore,

it was not a pasture or grass land. This order was not challenged by the appellants. Thereafter in the year 1984, respondent No. 1 made representations to various authorities of the State for compensation in respect of his land taken over for Seed Farm. By order dated 21.6.1985, the Directorate of Agriculture, Panaji rejected the claim of respondent No. 1 for payment of compensation by holding that the land taken over from respondent No. 1 was pasture or grass land and, therefore, the question of payment of compensation fell outside the purview of the law. The respondent challenged the said order by filing aforesaid writ petition before the High Court. The High Court allowed the writ petition and held that respondent No. 1 was divested of vast land on 26.6.1968 against a representation that the same was required for a public purpose for the establishment of multipurpose seed farm and appropriate acquisition proceedings would be drawn up and he would be paid adequate compensation under the law. The possession of the land was taken from respondent No. 1 on 26.6.1968 under a solemn representation that respondent No. 1 would be paid due compensation according to law in force. In the year 1976, the Mamlatdar issued a notice to show cause as to why the said land being pasture or grass land should not be held to have vested in Government. The Mamlatdar by his order dated 30.9.1983, after recording the evidence, withdrew the said notice and dropped further proceedings against respondent no.1. Hence, respondent No.1 is entitled to have compensation of the land under the Land Acquisition Act. That order is challenged in this appeal.

In our view, considering the facts as stated above, it is apparent that the order passed by the High Court is just and legal. The Kabja receipt dated 26.6.1968 which is produced on record of this Court clearly mentions that possession of land was handed over on the condition and assurance that compensation was to be paid as per the rules and regulations of the Government. Apart from the fact that the question whether the land was pasture or grass land on the relevant date is pure question of fact, there is no evidence on record to establish that the land was grass land which vested in the State Government. The learned counsel for the appellant is also not in a position to point out any such evidence. At the time of taking possession of the land, it is nowhere mentioned that the land was pasture or grass land. Further taking over possession, the Collector issued show cause notice for that purpose and that notice was challenged before the High Court. On behalf of the Government, it was stated before the High Court that the notice be quashed. Hence, the Court quashed the said notice keeping the other issues open. If the land was in fact grassland, there was no necessity of withdrawing the show cause notice. Thereafter in 1976, Mamlatdar issued show cause notice as provided under the Regulations of 1962. Proceedings were initiated by the Mamlatdar for determination whether the land was grass land or it was being cultivated. The order of Mamlatdar reveals that on the date of inspection, the entire area was under cultivation and was having fruit bearing trees planted by the Agricultural Department and, therefore, proceedings initiated on the basis of show cause notice were dropped. The Mamlatdar also ordered that respondent No. 1 should file his claim for compensation before the appropriate authority. That order attained finality as the Government did not challenge the same before the appropriate forum.

In view of the aforesaid final order, it is not open to the State Government to deny the rights of respondent No.1. Hence, it cannot be said that the order passed by the High Court is in any way illegal or erroneous.

In the result, the appeal fails and is dismissed with costs. Interim relief stands vacated.

JUDIS