PRAHLAD SINGH & ORS.
v.
UNION OF INDIA & ORS.
(Civil Appeal No. 3779 of 2011)

APRIL 29, 2011

[G. S. Singhvi and Asok Kumar Ganguly, JJ.]
[2011] 5 SCR 1002

The following order of the Court was delivered

O R D E R

Delay condoned.

Leave granted.

Whether the acquired land can be treated to have vested in the State Government under Section 16 of the Land Acquisition Act, 1894 (for short, "the Act") on the making of an award by the Collector though the actual and physical possession continues with the landowner is the question which arises for consideration in this appeal filed against the order of the Division Bench of the Punjab and Haryana High Court whereby the writ petition filed by the appellants questioning the acquisition of their land was dismissed.

In exercise of the power vested in it under Section 4(1) of the Act, the Government of Haryana issued notification dated 17.4.2002 for the acquisition of the appellants' land along with other parcels of land of village Baloure, Tehsil Bahadurgarh, District Jhajjar for development and utilization thereof for residential, commercial and institutional parts of different sectors of Bahadurgarh.

The predecessors of the appellant and other landowners filed objections under Section 5-A(1) and prayed that their land may not be acquired because they had developed the same for agricultural activities like dairy, gardening etc. by investing huge money. They claimed that the acquisition proceedings

were initiated without application of mind and there was no justification to acquire fertile and irrigated land. They also pointed out that land acquired for the same purpose in 1965 was still lying vacant and undeveloped. Another objection taken by the predecessors of the appellant and other landowners was that the area proposed to be acquired falls in the National Capital Region under the National Capital Region Planning Board Act, 1985 (for short, "the 1985 Act") and in the Regional Plan prepared by the National Capital Region Planning Board (for short, "the Board"), land in question has been shown as part of Green Belt/Green Wedge and, as such, the same cannot be acquired for residential, commercial and institutional purposes. In support of this plea, the landowners relied upon an order passed by this Court in C.A. Nos.4384 and 4385 of 1994.

Although, it is not clear from the record as to how the Collector dealt with the objections and submitted recommendations to the State Government, this much is evident that the State Government issued declaration dated 10.4.2003 under Section 6 of the Act reiterating its resolve to acquire the entire area notified under Section 4(1) on 17.4.2002. Thereafter, the Land Acquisition Collector passed award dated 25.6.2004.

Immediately after pronouncement of the award, the predecessors of the appellant and other landowners filed 69 writ petitions questioning the acquisition proceedings on various grounds including non-consideration of their objections, non-application of mind by the Collector and the concerned authorities of the State Government and violation of the provisions of the 1985 Act and Regional Plan 2001 prepared by the Board. They pleaded that being a participating State, the State of Haryana is bound to act in consonance with the provisions of the 1985 Act and it cannot acquire land in violation of Regional Plan 2001. They relied upon the judgment of this Court in Ghaziabad Development Authority v. Delhi Auto & General Finance (Pvt.) Ltd. (1994) 4 SCC 42 and pleaded that the land which has been identified in Regional Plan 2001 as Green Belt/Green Wedge cannot be used for the

purpose of urbanization. They also claimed that possession of the acquired land was still with them and they were cultivating the same.

The Division Bench of the High Court did not deal with the grounds on which the appellants questioned the acquisition of their land including the one that the impugned acquisition was contrary to the provisions of the 1985 Act and Regional Plan 2001 and dismissed the writ petitions by observing that once the land has vested in the State Government, the writ petitioners do not have the locus to challenge the acquisition proceedings. The Division Bench relied upon the judgments of this Court in *Municipal Corporation of Greater Bombay v. Industrial Development and Investment Company (P) Ltd.* (1996) 11 SCC 501, *C. Padma v. Deputy Secretary to the Government of Tamil Nadu* (1997) 2 SCC 627, *Municipal Council, Ahmednagar v. Shah Hyder Beig* (2000) 2 SCC 48, *Star Wire (India) Ltd. v. State of Haryana* (1996) 11 SCC 698, *Swaika Properties (P) Ltd. v. State of Rajasthan* (2008) 4 SCC 695 and *Sawaran Lata v. State of Harayana* (2010) 4 SCC 532 and held as under:

> "It is, thus, well settled that no writ petition would be competent after passing of award because possession of land is taken and it is deemed to vest in the State Government free from all encumbrances. The petitioners would of course be entitled to compensation at the market value prevalent at the time of issuance of notification under Section 4 of the Act in accordance with the award subject to further remedies of reference etc. The petitioners would also be entitled to compensation for the user of the land from the date of possession to the date of notification issued under Section 4. Thus, no ground is made out to accept the contention raised by the petitioners and to quash the acquisition proceedings subject matter of these petitions."

Mrs. Rani Chhabra, learned counsel appearing for the appellants argued that the impugned order is liable to be set aside because the premise on which the High Court dismissed the writ petition, namely, vesting of the

acquired land in the State Government is ex facie erroneous. Learned counsel submitted that at no point of time possession of the acquired land was taken by the State authorities and, therefore, the same cannot be treated to have vested in the State Government. Mrs. Chhabra invited our attention to the assertion contained at page 'Y' of the List of Dates and documents marked Annexures-P5 and P6 to show that physical possession of the land is still with the appellants. Learned counsel emphasised that the appellants have been in continuous possession of the land and carrying on agricultural operations and submitted that the High Court gravely erred by declaring that the acquired land will be deemed to have vested in the State Government under Section 16 of the Act. Mrs. Chhabra submitted that the High Court should have examined the important issues raised by the appellants including the violation of the provisions of the 1985 Act and Regional Plan 2001 prepared by the Board in which the acquired land is shown as part of the Green Belt/Green Wedge and decided the writ petition on merits keeping in view the fact that the same remained pending for 10 years and during that period the landowners had been undertaking agricultural operations.

Learned counsel appearing for the State could not draw our attention to any material to show that actual and physical possession of the acquired land had been taken by the State authorities. He, however, argued that by virtue of Section 16 of the Act the acquired land will be deemed to have vested in the State Government because the Land Acquisition Collector has passed award on 25.6.2004.

We have given our serious thought to the entire matter and carefully examined the records. Section 16 lays down that once the Collector has made an award under Section 11, he can take possession of the acquired land. Simultaneously, the section declares that upon taking possession by the Collector, the acquired land shall vest absolutely in the Government free from all encumbrances. In terms of the plain language of this section, vesting of the acquired land in the Government takes place as soon as possession is

taken by the Collector after passing an award under Section 11. To put it differently, the vesting of land under Section 16 of the Act presupposes actual taking of possession and till that is done, legal presumption of vesting enshrined in Section 16 cannot be raised in favour of the acquiring authority.

Since the Act does not prescribes the mode and manner of taking possession of the acquired land by the Collector, it will be useful to notice some of the judgments in which this issue has been considered. In *Balwant Narayan Bhagde v. M.D. Bhagwat* (1976) 1 SCC 700, Bhagwati J., (as he then was), speaking for himself and Gupta J. disagreed with Untwalia J., who delivered separate judgment and observed:

> "……We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. *There can be no question of taking "symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land.* How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. *But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was*

sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

(emphasis supplied)

In *Balmokand Khatri Educational and Industrial Trust v. State of Punjab* (1996) 4 SCC 212, the Court negatived the argument that even after finalization of the acquisition proceedings possession of the land continued with the appellant and observed:

"It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 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".

In *P.K. Kalburqi v. State of Karnataka* (2005) 12 SCC 489, the Court referred to the observations made by Bhagwati, J. in *Balwant Narayan Bhagde v. M.D. Bhagwat* (supra) that no hard and fast rule can be laid down as to what act would be sufficient to constitute taking of possession of the

acquired land and observed that when there is no crop or structure on the land only symbolic possession could be taken.

In *NTPC v. Mahesh Dutta* (2009) 8 SCC 339, the Court noted that appellant NTPC paid 80 per cent of the total compensation in terms of Section 17(3A) and observed that it is difficult to comprehend that after depositing that much of amount it had obtained possession only on a small fraction of land.

In *Sita Ram Bhandar Society v. Govt. of NCT, Delhi* (2009) 10 SCC 501 and *Omprakash Verma v. State of Andhra Pradesh* (2010) 13 SCC 158, it was held that when possession is to be taken of a large tract of land then it is permissible to take possession by a properly executed panchnama. Similar view was expressed in the recent judgment in *Brij Pal Bhargava v. State of UP* 2011(2) SCALE 692.

The same issue was recently considered in C.A. No. 3604 of 2011 – *Banda Development Authority, Banda v. Moti Lal Agarwal* decided on 26.4.2011. After making reference to the judgments in *Balwant Narayan Bhagde v. M.D. Bhagwat* (supra), *Balmokand Khatri Educational and Industrial Trust v. State of Punjab* (supra), *P.K. Kalburqi v. State of Karnataka (supra), NTPC v. Mahesh Dutta* (supra), *Sita Ram Bhandar Society v. Govt. of NCT, Delhi* (supra), *Omprakash Verma v. State of Andhra Pradesh* (supra) and *Nahar Singh v. State of U.P.* (1996) 1 SCC 434, this Court laid down the following principles:

> "(i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
>
> (ii) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.
>
> (iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not

sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken."

If the present case is examined in the light of the facts which have been brought on record and the principles laid down in the judgment in Banda Development Authority's case, it is not possible to sustain the finding and conclusion recorded by the High Court that the acquired land had vested in the State Government because the actual and physical possession of the acquired land always remained with the appellants and no evidence has been produced by the respondents to show that possession was taken by preparing a panchnama in the presence of independent witnesses and their signatures were obtained on the panchnama.

A reading of the Khasra Girdawari and Jamabandis, copies of which have been placed on record, shows that actual and physical possession of the

acquired land is still with the appellants. Jamabandis relate to the year 2005-2006. Copies of notice dated 10/11.2.2011 issued by Uttar Haryana Bijli Vitran Nigam Ltd. relates to appellant No.1 – Prahlad Singh and this, prima facie, supports the appellants' assertion that physical possession of the land is still with them. Respondent Nos. 3 to 6 have not placed any document before this Court to show that actual possession of the acquired land was taken on the particular date. Therefore, the High Court was not right in recording a finding that the acquired land will be deemed to have vested in the State Government.

The judgments, which have been referred to in the impugned order really do not have any bearing on the case in hand because in all those cases, the Court had found that possession of the acquired land had been taken.

In *Municipal Corporation of Greater Bombay v. Industrial Development and Investment Company (P) Ltd.* (supra), this Court declined to interfere with the acquisition proceedings on the ground of delay. The facts of that case were that after preparation of the draft development plan for 'G' Ward of the Bombay Municipal Corporation, notification dated 6.7.1972 was issued under Section 126(2) of the Maharashtra Regional and Town Planning Act, 1966 for the acquisition of land needed for implementing the development plan. Respondent Nos.1 and 2, who were in possession of the land as tenants, filed claim for compensation. They were heard by the competent authority in 1979. In the meanwhile, the Bombay Metropolitan Region Development Authority Act, 1974 was enacted by the State Legislature and notifications were issued under that Act. In 1979, City Survey No.503 was de-reserved from the earlier public purpose of locating the extension of Dharavi Sewage Purification Plant and the entire land was to be utilized for residential, commercial, para-commercial and social facilities by the local residents of the area. After the award was made by the Collector, possession of the acquired land was taken. The respondents filed writ petition after lapse of four years from the date of taking possession. The learned Single Judge dismissed the

writ petition but the Division Bench allowed the appeal. This Court held that once the award was passed and possession was taken, the High Court should not have exercised its power to quash the award.

In *C. Padma v. Deputy Secretary to the Government of Tamil Nadu* (supra), the Court held that once the acquired land vested in the State Government and compensation was paid after taking possession, the appellant was not entitled to question the acquisition proceedings.

In *Municipal Council, Ahmednagar v. Shah Hyder Beig* (supra), this Court reversed the judgment of the Bombay High Court on the ground that they had moved the Court after 21 years of the issue of notifications under Section 6 and 16 years from the date of making an award and taking of possession.

The same view was reiterated in *Swaika Properties (P) Ltd. v. State of Rajasthan* (supra). In that case, the writ petition was filed in 1989 after the award was passed and possession of the acquired land was taken.

In *Sawaran Lata v. State of Harayana* (supra), the landowners were denied relief because they had approached the High Court after 8 years of the notification issued under Section 4(1) and about 5 years of the passing of award and taking of possession.

In the result, the appeal is allowed. The impugned order is set aside and the matter is remitted to the High Court for disposal of the writ petition on merits. The parties are left to bear their own costs.