

PETITIONER:
SPECIAL LAND ACQUISITION OFFICER, BOMBAY, AND OTHERS.

Vs.

RESPONDENT:
GODREJ AND BOYCE

DATE OF JUDGMENT 27/10/1987

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
VENKATARAMIAH, E.S. (J)

CITATION:
1987 AIR 2421 1988 SCR (1) 590
1988 SCC (1) 50 JT 1987 (4) 218
1987 SCALE (2) 851

ACT:
Land Acquisition Act-Power of the Government to withdraw proceedings for acquisition of lands under section 48 after issue of notification under section 4 thereof.

HEADNOTE:

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The State Government, by a notification dated November 6, 1961, issued under section 4 of the Land Acquisition Act, notified for acquisition lands belonging to the respondent. This was followed by a declaration dated November 18, 1965, under section 6 of the Act, and the notices calling upon the respondent to put its claims for compensation in respect of the lands sought to be acquired. Thereafter, no further action was taken in this behalf. In the meantime, the lands in question were encroached upon by a large number of trespassers who put up slums thereon. The respondent repeatedly asked the State Government to take steps to remove the encroachments and expedite the making of the award and payment of the compensation but no action was taken by the Government. The respondent thereupon filed a Writ Petition in the High Court for a writ of mandamus, directing the State Government to make the award under section 11 of the Act, and take possession of the lands after payment of the compensation to the respondent.

On March 25, 1981, the State Government passed an order under section 48 of the Act, withdrawing the lands of the respondent from acquisition, and the respondent was, accordingly, informed of that decision. The respondent thereupon amended its writ petition to challenge the withdrawal order above-said as mala fide and to pray for the quashing of the same. The writ petition was allowed by a Single Judge of the High Court and his decision was affirmed by a Division Bench of the High Court. Aggrieved, the State-Government appealed to this Court, against the decision of the High Court.

Allowing the appeal, the Court,

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HELD: The High Court erred in striking down the order under section 48 of the Land Acquisition Act and compelling the State

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Government to acquire the lands of the respondent. Under the scheme of the Act, neither the notification under section 4 nor the declaration under section 6 nor the notice under section 9 is sufficient to divest the original owner of, or other person interested in, the land of his rights therein. Section 16 makes it clear beyond doubt that the title to the land vests in the Government only when possession is taken by the Government, and till that point of time, the land continues to be with the original owner and he is also free (except where there is specific legislation to the contrary) to deal with the land just as he likes. So long as the possession is not taken over, the mere fact of a notification issued under section 4 or a declaration made under section 6, does not divest the owner of his rights in the land to take care of it and confer on the State Government any right whatsoever to interfere with the ownership of the land or safeguard the interests of the owner. Section 48 gives liberty to the State Government to withdraw from the acquisition at any stage before the possession of the land is taken by it. By such withdrawal, no irreparable prejudice is caused to the owner of the land, and, if at all the owner has suffered any damage in consequence of the acquisition proceedings or incurred costs in relation thereto, he will be compensated therefor under s. 48(2). As held in Trustees of Bai Smarth Jain Shvetamber Murtipujak Ganodhaya Trust and Ors. v. State of Gujarat and another, AIR 1981 Gujarat 107, the State can be permitted to exercise its power of withdrawal unilaterally. Having regard to the scheme of the Act, it is difficult to see why the State Government should at all be compelled to give any cogent reasons for its decision not to go ahead with the acquisition of any land, as was the view of the High Court. It is well settled in the field of specific performance of contracts that no person will be compelled to acquire any land, as a breach of a contract can always be compensated for by damages. That is also the principle of section 48(2) of the Act. [594D-H; 595A-D]

Even assuming that a withdrawal order under section 48 should be backed by reasons and should be bonafide, in the present case, the order is not vitiated in any manner. The Government had intended to acquire vacant land for the construction of houses, but his land had been over-run by slum dwellers to such an extent that it was not possible for the Government to effectuate the intended purpose of acquisition. The Government cannot be compelled to go ahead with the acquisition. Where slum dwellers on a large scale occupy pieces of land, social and human problems of such a magnitude arise, that it is virtually impossible for municipalities, and no mean task for the Government, to get the lands vacated, and in view of these genuine difficulties if the Government is reluctant to go ahead with the acquisition, it can hardly

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be blamed. The Court sees no justification to direct the Government to embark upon such a venture to acquire the land. Section 24 of the acts lays down the rule that the State will, generally speaking, pay for the land only in the condition in which it was on the date of issue of the notification under sec. 4, and that subsequent changes on the land will not be taken into account in the determination of the compensation. The fact that the Government exercised the power of withdrawal after the writ petition was filed, does not spell mala fides, once, the existence of circumstances, which justified the decision of the

Government to withdraw, is acknowledged. Far from a decision to withdraw in such a case being considered mala fide, the Government would have been acting mala fide if, despite the clear knowledge that the land could not be used for its purpose, it had decided to go ahead with the acquisition. The State Government has definitely acted in the best interests of the public and public revenues and its decision could not be faulted. [595D-F, H; 596B; F-H]

Appeal allowed. Orders impugned of the High Court set aside. n Rules issued by the High Court discharged. [597G]

M/s. Majas Land Development Corpn. and another v. State of Maharashtra and others, AIR 1983 Bombay 188, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2622 of 1987

From the Judgment and order dated 6.8.1985 of the Bombay High Court in Appeal No. 139 of 1984.

V.S. Desai and A.S. Bhasme for the Appellants.

G.L. Sanghi, D. Chandrachud and Ms. Rainu Walia for the Respondents.

The Judgment of the Court was delivered by

RANGANATHAN, J. The question raised in this appeal is a somewhat unusual one. The State Government wants to withdraw proceedings for acquisition of lands initiated by it under the Land Acquisition Act (hereinafter referred to as 'the Act') by exercising its power under section 48 but the owner of the land is insisting that the Government should be directed to go ahead with the acquisition, taken over the lands and pay him compensation. The reasons for this some-
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what unusual request will become apparent a little later.

By a notification dated 6th November, 1961, issued under section 4 of the Act, certain lands belonging to the respondent company were notified for acquisition in order to accommodate housing schemes of the Maharashtra Housing Board. This was followed up, on 18th November, 1965, by a declaration under section 6 of the Act and, on 15th January, 1966, by notices calling upon the respondent to put forward its claims of compensation in respect of the land sought to be acquired. Thereafter, however, no further proceedings were taken. In the meantime it appears that the lands were encroached upon by a large number of trespassers who put up slums thereon. The respondent repeatedly requested the State Government to take steps to remove the encroachments and to expedite the making of the award and payment of compensation but these requests went unheeded. The respondent thereupon filed Miscellaneous Petition No. 1803/78 in the High Court of Bombay praying, inter alia, for a Writ of Mandamus directing the State Government to make the award under section 11 of the Act and to take possession of the lands after payment of due compensation to the respondent.

On 25th March, 1981, the State Government passed orders withdrawing the lands of the respondent from acquisition under section 48 of the Act. The respondent was informed of this decision on the 20th of October, 1981 and an affidavit to this effect was also filed in the High Court in reply to the Writ Petition. Thereupon the respondent company amended its Writ Petition, challenged the withdrawal order as mala fide and included a prayer for quashing the decision of the State Government to withdraw its lands from the acquisition. This Writ Petition was allowed by a learned Single Judge of the High Court on 9.11.83 and his decision was affirmed by a

Division Bench on 6th August, 1985. The State Government has preferred this appeal.

The contention of the respondent before the High Court was that the State Government had acted mala fide in invoking the power of withdrawal permitted by section 48 in the facts and circumstances of the present case. It was contended that the purpose for which the lands had been sought to be acquired continued to subsist and that, all along, in the correspondence between the parties the State Government had given no indication that the lands were no longer needed by it for that purpose. It was urged that the order under section 48 had been passed, after the respondent company filed a writ petition, solely with a view to defeat the relief claimed by the Company in the writ

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petition and render the same infructuous. It was submitted that the A respondent had not been able to take steps to remove the encroachments because of the pendency of the proceedings for acquisition inasmuch as under section 24 of the Act any expenditure incurred by the company in this regard could not be taken into account in determining the compensation due to the respondent. It was pointed out that while the company was helpless in defending itself against the encroachments, the State had ample powers, while taking possession of the lands to remove the trespassers and enforce the surrender of the lands to the Government both under the Land Acquisition Act and the Maharashtra Land Revenue Code. It was urged that the long delay of about 20 years in taking the step of withdrawal showed mala fides on the part of the Government. A grievance was also made that no show cause notice had been given to the respondent company before the withdrawal order was passed. These contentions (except the last one which was left open) were accepted by the High Court.

We are of opinion that the High Court erred in striking down the order under s. 48 and compelling the State Government to acquire the lands of the respondent. Under the scheme of the Act, neither the notification under section 4 nor the declaration under section 6 nor the notice under section 9 is sufficient to divest the original owner of, or other person interested in, the land of his rights therein. Section 16 makes it clear beyond doubt that the title to the land vests in the Government only when possession is taken by the Government. Till that point of time, the land continues to be with the original owner and he is also free (except where there is specific legislation to the contrary) to deal with the land just as he likes, although it may be that on account of the pendency of proceedings for acquisition intending purchasers may be chary of coming near the land. So long as possession is not taken over, the mere fact of a notification under section 4 nor declaration under section 6 having been made does not divest the owner of his rights in respect of the land or relieve him of the duty to take care of the land and protect it against encroachments. Again, such a notification does not either confer on the State Govt. any right to interfere with the ownership or other rights in the land or impose on it any duty to remove encroachments therefrom or in any other way safe-guard the interests of the original owner of the land. It is in view of this position, that the owner's interests remain unaffected until possession is taken, that section 48 gives a liberty to the State Government to withdraw from the acquisition at any stage before possession is taken. By such withdrawal no irreparable prejudice is caused to the owner of the land, and if at all he has suffered any damage in cor

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quence of the acquisition proceedings or incurred costs in relation thereto, he will be compensated therefor under s. 48(2). In this view of the matter, it does not matter even if there is lapse of considerable time between the original notification and the withdrawal under section 48 as held in Trustees of Bai Smarth Jain Shvetambar Murtipujak Gyanodhyaya Trust and others v. State of Gujarat and another., AIR 1981 Gujarat 107. It also follows that the State can be permitted to exercise its power of withdrawal unilaterally and no requirement that the owner of the land should be given an opportunity of being heard before doing so should be read into the provision.

The High Court has taken the view that a decision of withdrawal from acquisition must be backed by reasons and cannot be arbitrary or whimsical. We may observe that having regard to the scheme of the Act as discussed above, it is difficult to see why the State Government should at all be compelled to give any cogent reasons for a decision not to go ahead with its proposal to acquire a piece of land. It is well settled in the field of specific performance of contracts that no person will be compelled to acquire a piece of land as any breach of a contract to purchase it can always be compensated for by damages. That is also the principle of section 48(2). But this consideration apart, and even assuming that a withdrawal order under section 48 should be backed by reasons and should be bona fide, we are of the opinion that in the present case the order is not vitiated in any manner. The Government had intended to acquire a vast piece of vacant land for construction of houses by the State Housing Board. But this land had been over-run by slum dwellers to such an extent that it was no longer possible for the Government to effectuate the intended purpose of acquisition. The High Court's observations that "the respondents have not stated in their affidavit that the lands in question are unsuitable for the purpose in question" and that "the purpose continues to exist" lose all meaning in the face of the finding recorded by the High Court itself at another place that "the lands of the petitioners today are fully occupied by unauthorised hutments which have come up on these lands, rendering the lands worthless." The basic question is really whether the Government can be held responsible for this state of affairs and can be compelled to go ahead with the acquisition though its purpose could not be achieved. We have already pointed out that the State can-not be held responsible for the occupation of the land by trespassers. It is true that if the Government decides to go ahead with the acquisition and to take possession of the land, it has powers to evict trespassers and to, secure possession of the land but, for this reason alone, they cannot be compelled to go ahead with the acquisition. In the conditions presently

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prevailing in major metropolitan cities, such eviction, for the Government, poses more serious difficulties than to a private person like the respondent company and it is common experience that, far from removing such encroachments, Government and municipalities are constrained to "regularise" them and provide them with civic necessities. Enactments like the Slums Act and the Urban Land Ceiling and Regulation Act have further complicated the situation. Where slum dwellers on a large scale occupy pieces of land, social and human problems of such magnitude arise that it is virtually impossible for municipalities, and no mean task even for the Government, to get the lands vacated. If the

Government is reluctant to go ahead with the acquisition in view of these genuine difficulties, it can hardly be blamed. We see no justification to direct the Government to acquire the land and embark on such a venture. We are also of the opinion that the fact that the Government exercised the power of withdrawal after the writ petition was filed does not spell mala fides, once the existence of circumstances, which, in our opinion, justified the Government's decision to withdraw, is acknowledged.

The High Court, in this context, has referred to s. 24 of the Act and pointed out that the respondent company could not afford to take steps for the eviction of the slum dwellers as it might incur in this behalf will not be taken into account in determining the compensation payable to it under the Act. This is not strictly correct for under s. 24, it was open to the respondent company to have incurred such expenditure with the sanction of the Collector and claimed reimbursement but the respondent company did not seek the sanction of the Collector in this regard. That apart, this clause of s. 24 is only a provision laying down the rule that the State will, generally speaking, pay for the land only in the condition in which it was on the date of the s. 4 notification and that subsequent changes on the land will not be taken into account in the determination of the compensation. It cannot follow from this provision that the State should be compelled to take over the land because the owner of the land will need to take care of it at his own cost until it vests in the Government. Far from a decision to withdraw in such cases as the present one, being considered to be mala fide, it could be perhaps said with greater truth that the Government would have been acting mala fide if, despite the clear knowledge that the land could not any longer be used for the purpose for which it had been acquired, it decided to go ahead with the acquisition. We are emphatically of the view that the State Government has acted in best interests of the public and of public revenues and its decision cannot be faulted.

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Before we conclude we may point out that somewhat similar questions came up for the decision of this Court in an appeal preferred by the State of Maharashtra, from an order of the Bombay High Court reported as *M/s. Majas Land Development Corpn. & another v. State of Maharashtra and others*, AIR 1983 Bombay 188. The special leave petition preferred by the State against the order of the High Court to a like effect was set aside by this Court, vide its order of August 1983, in Civil Appeal No. 6086 of 1983, by pointing out that it is open to the State Government to release the lands from acquisition and that the Land Acquisition officer cannot be compelled to make the award. It was, however, pointed out that the Government will be liable to pay compensation to the claimants under section 48(2) of the Land Acquisition Act. In the affidavit filed by the appellants before the High Court in the present case they have already called upon the respondent company to furnish details of claims, if any, regarding the compensation claimed under section 48. It is open to the respondent company to pursue this claim and the State Government will dispose of the same in accordance with law.

We are therefore of the opinion that the order passed by the State Government under section 48 should be upheld and the release of the lands from acquisition sustained.

Learned counsel for the respondent company contended that at the time the land was initially acquired under section 4 there had been a proposal that the Government

should grant in favour of the company some land contiguous to S. No. 40, Hissas Nos. 2 & 3, in exchange for the land sought to be acquired and that the appellants should be directed to give or sell some land to the petitioner. We are unable to follow how any such proposal, even if made originally, could survive in view of the acquisition proceedings having been dropped. However, we express no opinion in this regard and leave it to the company, if so advised, to pursue the matter with the Government.

For the reasons discussed above, the civil appeal is allowed and the orders of the High Court dated 9.11.1983 and 6.8.1985 are set aside. The Rule issued by the High Court stands discharged. However, in the circumstances of the case, we make no order as to costs.

S.L.

Appeal allowed.

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