

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 5700 OF 2012  
(arising out of SLP(C)No.18614 of 2004)

Ms. Shobha Devi Narsinh Shinde and Ors. ....Appellants

VERSUS

The Secretary, Govt. of India and Ors. ....Respondents

O R D E R

1. Leave granted.

The appellants are aggrieved by the order of the Bombay High Court dismissing the writ petition filed by them for annulment of the acquisition of land comprised in Survey No. 47, Hissa No. 4-C/2, measuring about 2 Hectares and 3 Ares situated at Village Bopodi, Pune City.

The facts necessary for deciding the appeal are as under:

The land in question was purchased by Shri Gunajirao Dhondoji Ghule (father of appellant No.1 - Ms. Shobha Devi Narsinh Shinde) by registered sale deed dated 22.12.1923.

The Collector, Pune in exercise of the power conferred upon him under Rule 75A(1) of the Defence of India Rules read with Notification dated 25.4.1942 issued by the Government of India requisitioned various parcels of land including the land of Shri Gunajirao Dhondoji. The order of requisition contained a stipulation that the property shall remain under requisition during the continuance of the war and six months thereafter.

Although, the 2nd World War was over in September, 1946, the tenure of requisition was extended by the respondents from time to time.

After 24 years, the Commissioner, Pune Division, to whom the functions exercisable by the Central Government under the Land Acquisition Act, 1894 (for short, 'the 1894 Act') were delegated, issued notification dated 4.10.1971 under Section 4 of the Act for the acquisition of land comprised in Survey Nos. 47/2, 47/3, 47/4A, 47/4B, 47/4C and 78 of Village Bopodi for a public purpose, namely, for defence purpose (tented hospital). After considering the report submitted by the Collector under Section 5A(2) the Commissioner issued declaration dated 17.3.1972 under Section 6, which was published in the Maharashtra State Gazette dated 6.4.1972.

The appellants, who had not filed objections under Section 5A(1), submitted application dated 28.4.1972 to Land Acquisition Officer, Defence Project (I), Pune for payment of compensation. The latter sanctioned advance interim

payment of Rs.1,36,000/- vide award proceeding No.LAWDFN Sr.No.5, 1971 dated 12.12.1973. The Special Land Acquisition Officer passed final award

dated 31.3.1982 for payment of Rs. 1,75,087.50 towards compensation, but the appellants did not accept the balance amount and filed application for enhancement of the compensation. Thereupon, the Collector made reference under Section 18, which was rejected by the District Judge, Pune vide judgment dated 13.2.1992. The appellants then filed First Appeal Nos. 158-160/1993, which were dismissed by the High Court vide judgment dated 20.10.2011.

In the meanwhile, the appellants filed Special Civil Suit No.317/1981 with the following substantive prayers:

"A) That the possession of the suit property viz. land bearing Survey No.47/4-C admeasuring 2 Hectors and 03 R and satiated at Bopodi in Poona City Taluka be handed over actually to the plaintiffs;

B) Mesne profits for the last three years and the future mesne profits be ordered to be granted to the plaintiffs."

Although, in the counter affidavit filed on behalf of respondent Nos. 1 and 2 in this Court, it has been averred that the suit was dismissed by Civil Judge, Pune but Shri Chinmoy Khaladkar placed before the Court the latest information downloaded from Maharashtra District Court's website to show that the suit is still pending and submitted that after restoration, the suit has not been taken up for effective hearing.

After 23 years of the issue of declaration under Section 6, the appellants filed Writ Petition No.4752 of 1995 for grant of a declaration that the acquisition proceedings and the award are ultra vires the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952 (for short, 'the Act of 1952') and for issue of mandamus to the respondents to discharge their obligation under Section 6 of the 1952 Act and restore actual possession of the property.

The Division Bench of the High Court dismissed the writ petition on the ground of laches and also on the ground that in view of the law laid down by the Supreme Court, it is impermissible for the High Court to interfere in the acquisition proceedings after pronouncement of the award. The Division Bench also opined that the appellants' plea of absence of public purpose is untenable because the respondents are going to use the land for permanent military hospital.

4. Shri Shekhar Naphde, learned senior counsel for the appellants argued that the impugned order is liable to be set aside because the High Court committed serious error by non-suiting his clients only on the ground of delay. Learned senior counsel emphasised that the appellants were quite vigilant in taking steps for protection of their property and this is the reason why they had filed suit in 1981, which remained pending till 1995 when they were constrained to file the writ petition because in State of Bihar v. Dharendra Kumar (1995) 4 SCC 229, this Court had ruled that the Civil Court does not have the jurisdiction to entertain challenge to the acquisition of land under the Act. Shri Naphde further argued that notification dated 4.10.1971 was void per se because the purpose for which the land was proposed to be acquired, namely, tented hospital was non-existent. Shri Naphde referred to letter dated 13.2.1973 written by the Office of the Controller of Defence Accounts, Southern Command PB No.23 to HQ RS, Poona Sub Area, Poona and letter dated 4.4.1973 written by Officiating Commander, Pune Sub Area, Pune to Headquarters, M and G Area with copies to other functionaries and submitted that there was no point in acquiring the land in 1971-1972 because the tented hospital was not required after the 2nd World War was over. Another argument of Shri Naphde is that the respondents did not have the jurisdiction to acquire the appellants' land under the 1894 Act because the property had not been released from acquisition after 1946 and, as such, the same could have been acquired only under the 1952 Act. In support of this argument, the learned senior counsel relied upon the provisions of Sections 5 to 8 of the 1952

Act and the judgments of this Court in Gobind Sugar Mills Ltd. v. State of Bihar (1999) 7 SCC 76 and Dayal Singh v. Union of India (2003) 2 SCC 593.

5. Shri H.P. Raval, learned Additional Solicitor General supported the impugned order and argued that the High Court did not commit any error by dismissing the writ petition on the ground of delay. He submitted that the appellants cannot rely upon the judgment of this Court in State of Bihar v. Dharendra Kumar (supra) to explain the delay of 23 years in filing of the writ petition because in the suit they had not prayed for declaring notifications dated 4.10.1971 and 17.3.1972 issued under Sections 4 and 6 of the 1894 Act as ultra vires the provisions of the 1952 Act. Shri Raval emphasized that the prayer of the suit was cleverly drafted to avoid the objection of limitation and the writ petition was filed in 1995 because the appellants realised that without seeking a declaration of invalidity qua the notifications issued under the 1894 Act they will not be able to persuade the Civil Court to pass a decree for return of the land. He referred to affidavit of Shri G.S. Rajeswaran, Defence Estate Officer, which was filed on 29.3.2012 to show that major portion of the land in question has already been utilised for construction of Married Accommodation, Phase-I and II at Army Station, Kirkee, Pune and submitted that any direction for return of land at this belated stage would be highly detrimental to public interest.

6. We have considered the respective arguments and carefully perused the record including the additional affidavits and documents filed by the parties along with various interlocutory applications.

7. In our opinion, the High Court did not commit any error by dismissing the writ petition on the ground of delay. The argument of Shri Naphade that the appellants had to file the writ petition in 1995 because in view of the law laid down in State of Bihar v. Dharendra Kumar (supra) they could not get the desired relief in the pending Civil Suit sounds little attractive but lacks merit and deserves to be rejected. In the suit filed by them in 1981, the appellants had not prayed for declaring notifications under Sections 4 and 6 of the 1894 as nullity on the ground that the same were ultra vires the provisions of the 1952 Act. Therefore, the judgment in State of Bihar v. Dharendra Kumar (supra) did not have any impact on the pending suit.

8. It is significant to note that in the writ petition, the appellants had not even made a mention of the judgment in State of Bihar v. Dharendra Kumar (supra) to justify filing of writ petition after more than 2 decades. Therefore, the pendency of suit could not be camouflaged to avoid an order of dismissal of the writ petition on the ground of laches.

9. Another important feature of the case is that even though in the writ petition filed by them, the appellants had unequivocally averred that they are ready and willing to withdraw the suit pending in the Court at Pune, they did not do so till the passing of the impugned order and even thereafter. The sole and obvious purpose of keeping the suit alive even after a gap of 30 years is to somehow or other to persuade the concerned Court to grant relief. In our view this conduct of the appellants one of whom is an advocate by profession is, by itself, sufficient to deny any indulgence to them by the Constitutional Courts.

10. In view of the above discussion, we do not consider it necessary to decide whether the notifications dated 4.10.1971 and 17.3.1972 issued under Sections 4 and 6 of the 1894 Act are ultra vires the provisions of 1952 Act.

11. In the result, the appeal is dismissed.

.....J.  
(G.S.SINGHVI)

.....J.

(SUDHANSU JYOTI MUKHOPADHAYA)

