

Jetpur in Rajkot district.

Notification under Section

4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was issued on 29.12.1970. After considering the objections of the landowners and other interested persons and the report submitted by the Collector under Section 5A(2) of the Act, the State Government issued declaration under Section 6(1) of the Act, which was notified on 25.6.1973.

Ranbai Vela, who is said to be the owner of land comprised in Survey No.964/2 filed Special Civil Application No.207/1974 questioning the acquisition of land. The same was dismissed by the High Court vide order dated 17.6.1974. It is the petitioner's case that Ranbai Vela died sometime in 1975 and by virtue of Will dated 15.6.1971 and Hiba dated 1.7.1972 executed by the deceased, he became the owner of the land.

After about 5 years 2 months of the issue of notification under Section 4(1) of the Act and 2½ years of the declaration issued under Section 6(1), the Board passed resolution dated 21.2.1976 that land ad-measuring 21 acres and 22 guntas comprised in Survey No.964/2 be

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released from the acquisition subject to the following conditions:

- "(1) Land owner will not claim damages or compensation from the Board, and
- (2) They will give written guarantee to the effect that they will pay the amount of expense of Board such as establishment expenses etc. regarding acquisition to the Board."

In furtherance of the aforesaid resolution, Deputy Engineer, Rajkot Sub-Division-3 sent letters to the landowners requiring them to deposit the specified amount as a condition for release of their respective parcels of land. Since the factum of demise of Ranbai Vela did not

come to the notice of the Board, letters were also addressed to her to deposit Rs.6,161/- so that the land owned by her could also be released.

The petitioner, who appears to have received the letters addressed to Ranbai Vela protested against the stipulations contained in the Board's resolution that the landowners should deposit the cost of establishment expenses as a condition for release of the acquired land but, after expiry of the time specified in the communications sent by the Deputy Executive Engineer, he expressed his willingness to deposit the amount. No action appears to have been taken

on his request because the file containing the resolution of the Board was sent to the State Government and also

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because the petitioner had not produced any evidence to establish his locus to seek release of land belonging to Ranbai Vela.

In the meanwhile, the Land Acquisition Collector passed an award dated 30.3.1978 and fixed market value of the acquired land. The petitioner participated in the award proceedings and made demand for fixing of higher market value. This is evinced from para 7 of the award, which is extracted below:

"Demand made by claimant and evidence thereof

Out of the claimants, Shobhakhani Bloch, administrator of Ranbai Vela, account-holder of 964/2-H has made a demand of Rs.70.00 per yard for land in front and Rs.50.00 per yard for back land and well house etc. It is shown in statement "B" with it. No documentary evidence has been produced in support of demand."

Soon after pronouncement of the award, the petitioner instituted Special Civil Suit No.85/1978 for declaration and permanent injunction. Learned Civil Judge (Senior Division), Gondal (for short, 'the trial Court') decreed the suit vide judgment dated 28.04.1995. The trial Court declared that the notifications issued under Sections 4 and 6 of the Act and the award were illegal,

void and inoperative and that the purpose of acquisition of land had already frustrated. The trial Court further

held that Rojkam dated 16.5.1994 prepared as an evidence of taking over possession of the acquired land is also null and void. Another finding recorded by the trial

Court was that Will Exhibit-85 and Hiba Exhibit-156 have
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been lawfully executed by Ranbai Vela. The trial Court

accordingly directed the Board to release the land belonging to Ranbai Vela in favour of the petitioner.

Civil Appeal No.70/1995 filed by the Board and Deputy Engineer, Rajkot was allowed by Joint District Judge, Gondal vide his judgment dated 7.5.2005 by observing that Civil Judge (Senior Division) did not have the jurisdiction to entertain suit for declaration and injunction.

After dismissal of the suit, the petitioner filed Special Civil Application No.24654/2005, for quashing notifications dated 29.12.1970 and 25.6.1973 issued under Sections 4(1) and 6(1) respectively. He also prayed for quashing award dated 30.3.1978 and for issue of a mandamus to the State Government to release the land owned by Ranbai Vela. Still further, he prayed for setting aside judgment of Joint District Judge, Gondal and quashing of the forcible taking over of possession of the acquired land on 12.6.2005.

The Division Bench of the High Court dismissed the writ petition by observing that once the land had vested in the State Government, a direction cannot be issued for release thereof.

appearing for the petitioner argued that the conditions incorporated in the resolution passed by the Board for release of the acquired land in terms of which the landowners were asked to pay the establishment expenses was wholly arbitrary and unreasonable and, therefore, notwithstanding the petitioner's failure to deposit Rs.6,161/- in terms of the letters sent by Deputy Engineer in the name of Ranbai Vela, the High Court should have overlooked the time lag of almost three decades and issued a mandamus for release of the land owned by Ranbai Vela. Learned senior counsel criticised the manner in which possession of the acquired land was taken first in 1994 and then in 2005 and submitted that the documents prepared by the Circle Officer could, at the best, be treated as evidence of paper possession and the physical possession continued with the petitioner because no notice was given to him. Shri Vishwanathan further submitted that the State Government's failure to release the land in favour of the petitioner has resulted in hostile discrimination and consequential violation of his fundamental right to equality guaranteed under Article 14.

Shri R.P. Bhat, learned senior counsel appearing for the Board, Ms. Hemantika Wahi and Ms. Madhvi Divan, learned counsel appearing for the State of Gujarat supported the order under challenge and argued that the petitioner is not entitled to any relief because

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possession of the acquired land had been taken in 1994 and delivered to the Board. Learned counsel submitted that having failed to take benefit of the policy decision taken by the Board for release of the acquired land, the petitioner will be deemed to have waived his right and, at this belated stage, the Court may not issue a direction to the State Government to release the acquired land by

exercising power under Section 48(1) of the Act.

We have considered the respective arguments and submissions and are convinced that the special leave petition deserves to be dismissed with exemplary costs.

In the Special Civil Application filed in 2005, the petitioner had conveniently omitted to make a mention of Special Civil Application No.207/1994 filed by Ranbai Vela for quashing the acquisition proceedings and dismissal thereof by the High Court. This he did with a view to keep the High Court in dark about negation of the landowner's challenge to the acquisition proceedings. We have no doubt that if the petitioner had disclosed that the special civil application filed by Ranbai Vela had been dismissed, he could not have made a prayer for quashing notifications dated 29.12.1970 and 25.6.1973 and, in any case, the High Court would have non suited him at the threshold only on that ground. Even this Court would not have issued notice to the respondents which compelled them to spend substantial amount in engaging advocates for

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contesting the special leave petition. It is settled law that a person who does not come to the Court with clean hands or makes an attempt to pollute the course of justice by suppressing the facts or withholding relevant information or making a misleading statement is not entitled to be heard on the merits of his cause. The

petitioner definitely falls in this category of litigants.

Therefore, we have no doubt that the special leave petition is liable to be dismissed on this ground alone.

Reference in this connection can usefully be made to the judgments of this Court in State of Haryana v. Karnal Distillery Co. Ltd. (1977) 2 SCC 431, Vijay Kumar Kathuria v. State of Haryana (1983) 3 SCC 333, Welcome Hotel and others v. State of Andhra Pradesh and others etc. (1983) 4

SCC 575, G. Narayanaswamy Reddy (dead) by L.Rs. and another v. Government of Karnataka and another (1991) 3 SCC 261, S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others (1994) 1 SCC 1, Agricultural and Processed Food Products v. Oswal Agro Furane and others (1996) 4 SCC 297, Union of India and others v. Muneesh Suneja (2001) 3 SCC 92, Prestige Lights Ltd. v. State Bank of India (2007) 8 SCC 449, Sunil Poddar and others v. Union Bank of India (2008) 2 SCC 326, K.D. Sharma v. Steel Authority of India Ltd. and others (2008) 12 SCC 481, G. Jayshree and others v. Bhagwandas S. Patel and others (2009) 3 SCC 141 and Dalip Singh v. State of U.P. and others (2010) 2 SCC 114.

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We also agree with the learned senior counsel for the Board that once the State Government had transferred possession of the acquired land to the Board, a direction cannot be issued for release thereof and the State Government cannot be compelled to exercise power under Section 48(1) of the Act. This principle has been succinctly laid down in Tamil Nadu Housing Board v. L. Chandrasekaran (Dead) by L.Rs. and others reported in (2010) 2 SCC 786.

Though, Shri Vishwanathan, learned senior counsel made efforts to convince us that document dated 16.5.1994 prepared by the Circle Officer as an evidence of taking possession should not be treated as a conclusive evidence of transfer of physical possession but having carefully gone through the documents produced before this Court, we are satisfied that the concerned officer had taken physical possession of the property and transferred the same to the Board.

There are two other reasons why the petitioner should be denied relief. Firstly, he did not inform the Board about the demise of Ranbai Vela in 1975 and

continued correspondence with the Deputy Engineer as if he was the owner of the land. Secondly, in the award proceedings, he had participated and claimed fixation of higher market value.

This shows that till the stage of passing of award the petitioner did not have any grievance against the acquisition. It is only after the passing of

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the award that he decided to challenge the acquisition proceedings. At one stage, he succeeded in convincing the trial Court to pass a decree in his favour but he could not reap the benefit of success because the decree of the trial Court was set aside by the appellate Court.

In the result, we hold that the petitioner has failed to make out a case for exercise of power by this Court under Article 136 of the Constitution and there is no valid ground much less justification for directing the State Government to issue notification under Section 48(1) for release of his land.

The special leave petition is accordingly dismissed with cost of Rs.1,00,000/- (Rupees One lakh), which the petitioner shall deposit with the Supreme Court Legal Services Committee within a period of one month from today. If the petitioner fails to deposit the amount of cost, the Secretary, Supreme Court Legal Services Committee shall recover the same as arrears of land revenue.

(O.P. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master