A TAMIL NADU HOUSING BOARD

v.

A. VISWAM (DEAD) BY LRS.

FEBRUARY 9, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Land Acquisition Act, 1894 :

Sections 6, 11, 12, 16, 18, 30—Award—Persons having interest in particular land—All of them having laid their claims LAO rightly deposited compensation in Court—Land acquired for public purpose viz. construction of houses and public park—Only a part of the land cannot be left out—Hence acquisition is complete in respect of all the lands mentioned in the Notification—Possession must therefore have been taken of the lands including the land in question—Therefore Injunction cannot be issued against the Housing Board, the true owner.

Balwant Narayan Bhagde v. *M.D. Bhagwat & Ors.,* **[1975] Supp. SCR 250, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3617-18 of 1996.

From the Judgment and Order dated 16.3.95 of the Madras High Court in R.P. No 81/94 and the Judgment and Order dated 7.4.94 in S.A. No 1526 of 1988.

Harish Salve, A. Mariarputham, Mrs. Aruna Mathur and Ajay Kumar for the Appellants.

R.F. Nariman, S. Nand Kumar, L.K. Pandey for the Respondents Nos. 3-8 & 11.

S. Sivasubramaniam, and M.A. Chinasamy for the Respondent No.9.

The following Order of the Court was delivered :

Leave granted.

These appeals by special leave arise from the judgment and decree

of the High Court of Madras made on April 7, 1994 in S.A. No. 1526 of 1988. The facts are not in dispute. A

Notification under Section 4(1) of the Land Acquisition Act, 1894 (Act 1 of 1894) (for short, the "Act") was published on September 17, 1958 acquiring a large extent of 339 acres of land comprising Kodambakkam and Pudoor villages known as "Part I Neighbourhood Scheme" and renamed as "Ashok Nagar Scheme" of Madras City for planned development. Declaration under Section 6 was published on November 26, 1958. The Land Acquisition Officer made his award under Section 11 on February 28, 1966. It is the case of the appellant that the Land Acquisition Officer had taken possession of the land on February 28, 1966 and delivered possession to the appellant on March 21, 1966. It is not in dispute that under the Scheme as many as 3639 residential houses have been constructed and delivered possession of. The disputed land in an extent of one acre and thirty two cents is set apart for public park in the Scheme which stood vested in the Municipality. B C D

It is the case of the respondent that he is the owner of the land having title to and possession of the same for over 30 years preceding the date of filing of the suit, viz., April 19, 1984 and the appellant was sought to interdict his possession and enjoyment. Consequentially, he filed the suit for perpetual injunction against the appellant. Admittedly, he was a servant of the Apparao Mudaliar. The trial Court dismissed the suit. On appeal, the City Civil Judge decreed the suit and the High Court confirmed the same. Thus these appeals by special leave. E

It is contended by Mr. R.F. Nariman, learned senior counsel appearing for the respondents, that in a mere suit for injunction though incidentally founded on title, the courts are require to record a finding whether the respondents were in possession of the land as on the date of the suit and if finding of being in possession is recorded then they are entitled to perpetual injunction against everyone except the true owner. In this case, all the three courts concurrently found as a fact that the respondents were in possession of the land as on the date of the suit. The appellant had not proved that possession was taken by the Land Acquisition Officer from the respondents. Thereby the right, title and interest held by the respondents was not divested by operation of Section 16 of the Act. Therefore, the respondents continue to remain to be the lawful owner. Accordingly, they F G H

A are entitled to injunction against everyone including the appellant-Board. In support of his contention, he placed strong reliance on *Balwant Narayan Bhagde* v. *M.D. Bhagwat & Ors.,* [1975] Supp. SCR 250.

The question is: whether the premise on which the learned counsel has projected the case is based on legally acceptable legal premise ? It is B true when the High Court has, as a pure appreciation of evidence, considered and recorded as a fact a finding on possession, normally this Court would accept such finding and proceed on that premise to decide substantial question of law of public importance, exercising the power under Article 136. As stated earlier, whether the High Court has proceeded on C that premise is the question. With due respect, the learned Judge has proceeded in recording a fact without adverting to operation of relevant provisions of the Act, failed to draw legal inferences from admitted or proved facts and had wrongly drawn the inference that the acquisition stood lapsed which constitute patent error giving rise to substantial question of law. It is an admitted fact the land was acquired under the Act after D due publication of the declaration under Section 6. As rightly contended by Mr. S. Sivasubramaniam, learned senior counsel appearing for some of the respondents, conclusiveness of the public purpose stands established. Thereafter, procedure prescribed in Chapter III of the Act requires to be followed and as a fact, admittedly, the LAO made his award on February E 28, 1966 and issued notice under Section 12. All the parties received compensation except in respect of the land in question. As a matter of law under Section 30, when claimant/owner receives compensation with or without, protest, LAO should pay the same. In case, no one received compensation, he is enjoined under Section 30 to deposit the compensation F in the court to which reference under Section 18 would lie and to make the reference under Section 30 accordingly. It is seen from the evidence that the LAO found one Appavoo Madaliar and Nataraja Mudaliar had interest in the land bearing Survey No. 140/4 of an extent of one acre and thirty two cents. Accordingly, in his award he mentioned that since all of them have laid the claim, he referred the dispute under Section 30 and G deposited the compensation in the court. As a corollary, possession would be taken and thereafter the land stands vested in the State under Section 16 free from all encumbrances.

The question is : whether the land in question was taken possession? H The issue squarely arises vis-a-vis the respondents. Unfortunately, the

respondents had not impleaded the LAO who had taken possession and delivered possession of the land to the appellant. It is not in dispute that under Ex.P-5, the LAO delivered possession to the appellant. Therefore, as rightly contended by Shri Harish Salve, learned senior counsel for the appellant, that the presumption under Section 114(e) of the Evidence Act would consequently get attracted to the facts in this case. The LAO in discharge of his official duty after taking possession of the disputed land with other lands, had, in turn, delivered the same to the appellant. It is seen that 339 acres of land acquired by a common notification was taken and the award came to be made and possession was taken of all the lands. Question arises : whether it would be possible for the LAO to take physical possession of the entire 339 acres of land and deliver the same to the Housing Board ? The approach to the question must be pragmatic and realistic but not purely legalistic. It is true that in *Balwant Narayan Bhagde's* case, Untwalia, J. had held at page 263 thus :

> "The question is what is the mode of taking possession ? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land"

Bhagwati, J. (as he then was) speaking for two members had held that :

> "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 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 as absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be

A sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was laying 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 Tehisldar, 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 mere paper possession, without the occupant or the owner every coming to know of it."

It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common Knowledge that in some cases the owner/interested person may not co-operate in taking possession of the land.

It is seen that in a letter written by the respondent himself, admitting the title of the Board to the land in the said survey number, he sought for allotment of alternative site. In other words, unless possession is taken and he is divested of the title and the same is vested in the appellant, he cannot make request to the appellant for providing him alternative site. It is not his case that at that stage he was still continuing to have title to the land in dispute. The admission is inconsistent with and incongruousto his interest. He was also aware that award was made and the possession obviously should have been taken thereunder. It is true that normally possession is nine times the title. If that principle is extended to public acquisition by illegal squatting, erstwhile owner has compensation as well as possession of the land by encroachment upon his erstwhile land and claim that he remained in possession. Such construction would defeat the public pur-

pose. As pointed out earlier, the LAO is the best person to speak to the factum of taking and giving delivery, to the appellant, of the possession of the land in survey No. 140/4 along with other lands but he was not impleaded as party defendant to the suit. It is seen that when the respondent is asserting his legal title to the acquired land, he should have necessarily the Government impleaded as party and claimed his possession as against the Government. That was not done. The Board having had possession from the LAO, cannot be expected to prove how the LAO had taken possession of the land.

From the facts in this case, it would be clear that possession must have been taken of the land consisting of 339 acres including 1.33 acres in survey No. 140/4. It is seen that when the land was acquired for planned development of the city and a large chunk of buildings has already been built up and the land admeasuring about 1 acre 32 cents has been set apart for park purpose, obviously along with other lands, the disputed land was taken possession and construction was made as per plans. Would it be possible for the appellant, without delivery of possession to the Housing Board, to construct such massive constructions and leave out only this part of the land bearing survey No. 140/4 which was set apart for public purpose, namely, public amenity of park ? The making of the plan would emerge only after the land is taken possession and demarcation thereof is made and constructions are carried out. It is erroneous to believe that possession still remained with the respondents and the LAO had not taken possession only of this piece if land. It is not the case of the respondent that he resisted taking possession of the land by LAO and thereafter the LAO took no action to have him dispossessed. The single Judge has not adverted to these material facts and the circumstantial evidence available from the established facts. He proceeded to consider on the premise that since the acquired land was not used for building purpose and possession was not taken, acquisition stood lapsed. Equally erroneous is the reasoning given by the District Judge. The High Court is wholly illegal in its conclusion. The District Judge proceeded on the premises that the revenue records do not show the name of the appellant mutated and the land was not registered in the name of the appellant. These circumstances are wholly illegal and unjustified. Section 11(4) r/w Section 51 of the Act itself exempts registration of the land acquired under the Act. The District Judge had obviously ignored the statutory provisions. It was unnecessary for the Housing Board to have the lands mutated in the revenue records and have

its name entered therein. It was not for its purpose. It was for public purpose, i.e., for construction of the houses and allotment thereof to the needy persons. After the construction of the houses, the public park stood vested in the acquisition. Obviously, at this stage the Municipality would have come to take possession exercising its jurisdiction when illegal encroachment was found on the land. At this stage, notice was given to the respondents and the respondent filed the suit for perpetual injunction.

Thus considered, the title of the land in Survey No. 140/4 having been vested in the appellant, to whomsoever it belonged earlier, it stood divested from him/them and no one can lay any claim to the said acquired land once over and claim injunction on that basis. The injunction, therefore, cannot be issued against the true owner, namely, the Housing Board in whom the land ultimately stood vested and then stood transferred to Municipal Corporation. A trespasser can not claim injunction against the owner nor can the court to issue the same.

Thus considered, we are of the view that grave error of law was committed by the High Court in confirming the decree of the appellate Court. Accordingly, the decrees and judgments of the first appellate Court and the High Court stand set aside and that of the trial Judge stands restored.

The appeals are accordingly allowed. No costs.

G.N. Appeals allowed.