

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4395 OF 2008

Smt.Kamlabai W/o. Bhaskar Mule
since deceased through legal heirs
Smt.Shilavati Shrikrishna Nisal
and others. ... Petitioners.

V/s.

State of Maharashtra & another. ... Respondents.

R.S.Apte, senior counsel with M.S.Lagu
for the petitioners.

V.A.Sonpal, AGP for respondent No.1.

K.Y.Mandlik for respondent No.2.

CORAM: V.C.DAGA and
MRS.MRIDULA BHATKAR, JJ.

DATED: 27th February 2009.

P.C.:

. Heard learned counsel for the rival parties.

. Perused petition.

2. The petitioners have filed this petition after 23 years seeking to quash and set aside the acquisition of land which was acquired by the State in the year 1975.

The Facts :

3. The factual matrix reveals that the petitioners were the owners of non-agricultural land admeasuring 4 Hectors and 66.40 Ares situated within limits of Nashik Municipal Corporation. This land was notified for acquisition by the State Government for public purposes under the provisions of the Land Acquisition Act, 1894 ("Act" for short) and rules framed thereunder.

4. The notification under section 4 of the Act was issued on 22nd September, 1972 followed by declaration under section 6 on 24th September, 1975. The said acquisition culminated in an award under section 11 by virtue of the agreement between the parties on 2nd October, 1975 since acquisition was for a company. The possession of the land was taken from the petitioners in the year 1982.

Submissions :

5. The petitioners have now come up with the present petition filed under Article 226 of the Constitution of India contending that the acquisition was fraudulent, that it was in breach of the rules framed under the Act and that the agreement between the petitioners and the acquiring body was not signed by all the trustees. The petitioners are also contending

that there is breach of agreement on the part of the acquiring company and that the land has not been used for the purpose for which it was acquired. The petitioners, thus, submits that the acquisition of the subject land is liable to be quashed and set aside. The petitioners have further prayed that the transfer of subject land under the agreement dated 16th May, 1975 published in Maharashtra Government Gazette dated 2nd October, 1975 be declared as null and void and further prayed for restoration of the land claiming possession thereof.

6. The learned A.G.P., appearing for respondent No.1 - State of Maharashtra, submits that the petition at the instance of the petitioners is not maintainable as the petitioners have no locus to file petition since the petitioners do not have any title as on date. He further submits that the petition is delayed. It suffers from laches as the petitioners are challenging the agreement executed on 2nd October, 1975 which was signed by the petitioners with open eyes. He further submits that the petitioners are not in possession of the subject land having lost possession in the year 1982 itself. He further submits that as per the policy

of the State, the land once acquired cannot revert back to the petitioners. Learned A.G.P., thus, submits that the petition is without any substance and the same is liable to be dismissed in limine.

7. Mr.Mandlik, learned counsel appearing for respondent No.2 while adopting the arguments advanced by learned A.G.P. submits that the petitioners have not approached this Court with clean hands. It is not a bonafide petition. The main purpose of the petition is to blackmail and harm respondent No.2 and to extract money. He also reiterated that the petitioners have no locus to file petition since they are not the owners of the property in question.

Consideration :

8. Having heard rival contentions, the petition is without any substance. Firstly, it suffers from laches. The acquisition was initiated in the year 1972. Declaration under section 6 of the Act was published in the year 1975. Agreement was executed by the petitioners on 2nd October, 1975. Petitioners delivered possession of the land in the year 1982. The petitioners have withdrawn compensation pursuant to the

agreement between the parties. As on date, the petitioners are not the title holders of the subject land. Under these circumstances, the contention advanced by the respondents that the petitioners have no locus to file this petition needs to be accepted (see **Satendra Prasad Jain v. State of U.P.**, AIR 1993 SC 2517 = 1993 (4) SCC 369, **Allahabad Development Authority v. Nasiruzzaman**, 1996 (6) SCC 424 , **Awadh Bihari Yadav v. State of Bihar**, 1995 (6) SCC 31)

9. Secondly, the contention sought to be advanced by the petitioners that the agreement dated 2nd October, 1975 is bad and illegal also cannot be accepted after lapse of 23 years, especially, when the said agreement was acted upon by the petitioners with open eyes. The petitioners have not refunded the amount of compensation nor have they made any statement showing their willingness to refund. In the circumstances, the submission advanced by the respondents that the petition is without any merits needs acceptance.

10. Thirdly, the petitioners have also alleged fraud on the part of the acquiring body. The challenge based on fraud necessarily needs adjudication being a

question of fact. The fraud can only be proved by leading evidence. Such question of fact warranting investigation of the alleged fraud cannot be gone into in writ jurisdiction. On this count also the petition is not maintainable and no discretionary jurisdiction can be exercised in favour of the petitioners.

11. Lastly, at this juncture, it will be relevant to take note of the fact that the petitioners had filed civil suit being Special Civil Suit No.11/1989. It was open for the petitioners to set up challenge based on the alleged theory of fraud. After having perused the plaint allegations, it is clear that no such case was put up in the suit. In this view of the matter, challenge on the ground of fraud is nothing but an after thought. At any rate, it is not available to the petitioners at this stage. After dismissal of the suit, the petitioner had filed first appeal before this Court under section 96 of the Code of Civil Procedure, 1908 being First Appeal No.152/2008. This appeal was withdrawn by the petitioners with liberty to challenge the acquisition. Needless to mention that mere withdrawal of the appeal does not take away the effect of dismissal of the suit. Once the suit is dismissed

and appeal is withdrawn, then the decree becomes final and conclusive. Writ jurisdiction is not available to the petitioners. Had the petitioners withdrawn the civil suit, the things would have been little different but the suit was not withdrawn, what is withdrawn is the appeal. Therefore, the liberty granted by the learned single Judge to resort to any other remedy keeping all rival contentions open can hardly make the petition tenable.

12. In the result, petition being without any substance is dismissed in limine. No order as to costs.

(MRIDULA BHATKAR, J.)

(V.C.DAGA, J.)