

MAHAVIR AND ANR. ETC. ETC. A

v.

THE RURAL INSTITUTE, AMRAVATI AND ANR. ETC. ETC.

JULY 28, 1995

[K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.] B

Land Acquisition Act, 1894 : Sections 4(1), 6, 9, 10 and 16.

Land Acquisition—Notification under section 4(1)—Sale of land by owner subsequent to Notification—Possession of land taken by State after due compliance with provisions—Transfer of land by State to Society—Held State is not bound by sale subsequent to Notification under section 4(1)—Purchaser's title was not perfected by adverse possession. C

Subsequent to the issue of the notification for acquisition of lands under section 4(1) of the Land Acquisition Act, 1894, the owner of the land sold the properties to the petitioners. However, after complying with the provisions of Act the Government took possession of the land and handed it over to the third respondent-Society. In a suit filed by the State all the courts below rejected the claim of the petitioners that they had perfected their title by adverse possession and granted decree in favour of the Government and Society. Hence these petitions. D E

Dismissing the petitions, this Court

HELD : 1. The sales made after the publication of the notification under Section 4(1) of the Land Acquisition Act are void sales and the State is not bound by such a sale effected by the owner. [422-C-D] F

2. In the circumstances of the case possession of land was complete and conclusive. No question of adverse possession arises unless it is pleaded and proved that after the possession was taken and handed over to the 3rd respondent, the petitioners have asserted their own right to the knowledge of the 3rd respondent and it had acquired in it and remained in uninterrupted possession and enjoyment, *nec vi, nec lam and nec pro cario*. That was not the case. Therefore, they cannot have any semblance of right by prescription. [422-F; G-H] G H

A CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 14430-32 of 1995.

From the Judgment and Order dated 11.10.94 of the Bombay High Court in Second A.Nos. 146-47 & 150 of 1982.

B Nikhil Nayyar and T.V.S.N. Chari for the Petitioners.

The following Order of the Court was delivered :

We do not find any justification warranting interference in this matter. Admittedly, notification under Section 4(1) of the Land Acquisition Act (for short, 'the Act') was published on January 29, 1957 and thereafter the owner sold the properties to the petitioners on June 11, 1957 and August 22, 1958. Declaration under Section 6 was published on August 14, 1958. Thus, it could be seen that the sales made after the publication of the notification under Section 4(1) are void sales and the State is not bound by such a sale effected by the owner. Admittedly, the notice under Section 9 and 10 was served on September 23, 1958 and award was made on October 9, 1959 and possession was taken on November 18, 1959. Thus, the acquisition was complete. The possession of the Government is complete as against the original owner and title of the original owner stood extinguished and by operation of Section 16 the State acquires the right, title and interest in the property free from all encumbrances. So any encumbrance made by the owner after notification under Section 4(1) was published does not bind the State. Possession would be taken through the usual mode of drafting a panchanama by the officer and signed by the witness. It is complete and conclusive. Thereby it is clear, as found by the court below that possession was taken as a fact and handed over to the 3rd respondent- Society. Therefore, the Society became the absolute owner of the acquired lands free from all encumbrances. The claim of the petitioners that they have perfected title by adverse possession was negatived by all the Courts. No question of adverse possession arises unless it is pleaded and proved that after the possession was taken and handed over to the 3rd respondent, the petitioners have asserted their own right to the knowledge of the 3rd respondent and it had acquired in it and remained in uninterrupted possession and enjoyment, *nec vi, nec lam ad ne pre cario*. That was not the case. Therefore, they cannot have any semblance of right by prescription. It is rather unfortunate that State filed a suit for possession.

H They should have resorted to summary eviction under the Public Premises

Act etc.; instead they have gone to the Civil Court. All the courts granted A decree in favour of the Government and the Society. We do not find any ground warranting interference with judgment and decree in S.A. Nos. 146, 147 and 150 of 1982 dated October 11, 1994 of Bombay High Court at Nagpur bench.

The S.L.Ps. are accordingly dismissed.

T.N.A.

Petitions dismissed.