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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 23rd OF JUNE, 2023

WRIT PETITION No. 5827 of 2021

BETWEEN:-

**SMT GAURADEVI W/O SHRI
RADHESHYAM, AGED ABOUT 64 YEARS,
OCCUPATION: HOUSE WIFE 221/3,
SURVHARA NAGAR INDORE (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI YOGESH KUMAR MITTAL, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH THE PRINCIPAL
SECRETARY OF URBAN
1. DEVELOPMENT AND HOUSING,
VALLABH BHAWAN (MADHYA
PRADESH)**

**INDORE DEVELOPMENT AUTHORITY
THROUGH CHIEF EXECUTIVE
2. OFFICER PRADHIKARAN BHAWAN, 7,
RACE COURSE ROAD, INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

***(BY SMT. GEETANJALI CHAURASIYA, GOVERNMENT ADVOCATE)
(MS. MINI RAVINDRAN, LEARNED COUNSEL FOR THE
RESPONDENT NO. 2)***

*This application coming on for admission this day, the Court
passed the following:*

ORDER

Petitioner's case

1- The petitioner purchased a diverted land bearing Khashra No. 22/1/2/5 (3) area 0.405 hectares situated at Village Kumedi, Tehsil Sanwer, District-Indore vide registered sale-deed dated 25.03.2005. The younger son of the petitioner established an industry in the aforesaid land in the year 2008. Respondent No. 2 published a declaration of Scheme No. 169-A on 25.07.2008. A draft scheme under Section 50(3) of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as "the Adhiniyam") was published inviting the objections of affected landowners. All the affected persons including the petitioner submitted objections. All the objections were rejected by passing an order dated 16.08.2010. Thereafter, a final scheme was published under Section 50(7) of the Adhiniyam on 15.10.2010.

2- Being aggrieved by the order dated 16.08.2010, the petitioner filed a revision under Section 51 of the Adhiniyam before the Revisional Authority in the year 2011. According to the petitioner, till date, neither the said revision is decided nor the scheme has been implemented. The petitioner approached this Court by way of W.P. No. 12637/2013 and vide order 21.10.2013, the writ petition was disposed of by directing the respondent to decide the representation by a reasoned order. According to the petitioner, even the said direction has not been complied with.

3- It is further pleaded in the petition that after a lapse of 8 years from the date of publication of the final scheme, vide letter dated 06.06.2018, respondent Indore Development Authority offered a developed plot of a small area as compared to the acquired land by

directing the petitioner to execute an agreement and register a sale-deed in favour of respondent No. 2. According to the petitioner, under Section 56 of the Adhiniyam, the land can be taken by way of agreement upto 3 years from the date of publication of final scheme and thereafter on its failure to acquire the land, the State Government has no option but to go for acquisition of the land under the provisions of Land Acquisition Act, 1894. Now, the only later option available to respondents is to acquire the land of the petitioner and pay compensation in cash or to permit the petitioner to utilize his land. The petitioner cannot be left at the mercy of respondents who are neither paying compensation nor permitting the petitioner to use the land. Therefore, in the interest of justice, relief be granted to the petitioner has been granted by this High Court vide order dated 29.03.2016 passed in W.P. 6318/2015.

Reply of the respondents

4- Indore Development Authority contended that vide order dated 01.12.2011, the revision filed by the petitioner had already been dismissed and the petitioner has not challenged the said order till date, therefore, the petition in respect of relief for quashment of the scheme is liable to be dismissed. It is further submitted that the entire scheme comprises the area of 95.204 hectares of land situated at Village Bhanwrasla, Kumedi, Narvar, Sukhliya and Kabitkhedi out of which private land is 79.216 hectares and Government land is 15.988 hectares and out of which land area 10.973 hectares is used for the construction of I.S.B.T. The sale-deeds had been executed by the land owners in respect of the area admeasuring 16.940 hectares and agreements for the land area 55.219 hectares had been executed between the land owners and I.D.A. The development

work is at the verge of completion. The land owners who executed the agreement with the Indore Development Authority had been granted developed plots. The petitioner cannot utilise his land at this juncture to frustrate the development of the entire scheme. It is further submitted that Indore Development Authority is ready to give 26% of the developed plots in Scheme No. 169A which is a fully developed scheme to the petitioner based on a decision taken by the Board's Resolution No. 65 dated 30.05.2015. The facts of the case are different from the case of Rupali Khemka (supra) as that was in respect of Scheme No. 175 where no development was undertaken. Hence, the writ petition is liable to be dismissed.

Submission of petitioner's counsel

5- Shri Yogesh Kumar Mittal, learned counsel argued that the final scheme was published in the year 2010 under the provision of Section 56 of Adhinyam, hence the land could have been taken by way of agreement within 3 years, thereafter, the same could be acquired under the provisions of the Land Acquisition Act. The respondent gave an offer for the execution of the agreement in the year 2018 which cannot be accepted or implemented in view of the provision of Section 56 of the Adhinyam. Now, only the recourse is available to go for acquisition proceedings and pay cash compensation to the petitioner. It is further submitted by the learned counsel that since the revision has been dismissed, therefore, the petitioner is not pressing the relief for quashment of the scheme.

Submission of the counsel of respondent No.2

6- Ms. Mini Ravindran, learned counsel refuted that 90% of the land owners had agreed to give their land by way of the agreement only, the petitioner is adamant to give her land by way of agreement

to frustrate the scheme. It is further submitted that Indore Development Authority constituted a committee to give opinion in this matter. The committee headed by Hon'ble Shri Justice V.S. Kokje, Former Judge of this High Court recommended that the land be taken from the land owners by way of agreement as per Section 56 of the Adhiniyam and instead of paying compensation to the land owner, land developed by the I.D.A. in the scheme may be given to the land owners in proportion to the area of the percentage of the land so taken in the scheme. The Board vide its Resolution No.65 dated 30.05.2015 accepted the proposal of the committee and according to aforesaid acceptance, 26% of the developed land would be given to the land owners in lieu of their land. After 2011, the petitioner remained silent and filed a writ petition in the year 2022 seeking quashment of the scheme which is not possible as well as permissible at this stage when the scheme is at the verge of completion. It is further submitted by the learned counsel that the land belonging to the petitioner cannot be released at this stage as the same will adversely affect the development work. However, under Section 51, the revision had already been dismissed long back, hence Writ Petition be dismissed.

Appreciations & Conclusion

7- Facts, as stated above, are not in much controversy and hence need not be repeated here. For ready reference section 56 of the Adhiniyam is reproduced below:-

56. Acquisition of land for Town and Country Development Authority. - The Town and Country Development Authority may at any time after the date of publication of the final town development scheme under Section 50 but not later than three years therefrom, proceed to acquire by agreement the land

required for the implementation of the scheme and, on its failure so to acquire, the State Government may, at the request of the Town and Country Development Authority, proceed to acquire such land under the provisions of the Land Acquisition Act, 1894 (No. 1 of 1894) and on the payment of compensation awarded under that Act and any other charges incurred by the State Government in connection with the acquisition, the land shall vest in the Town and Country Development Authority subject to such terms and conditions as may be prescribed.

8- From the provisions of Section 56, it is clear that the Development Authority within a period of 3 years from the date of publication of the final scheme, can acquire the land from the owner by way of agreement and in failure to acquire, the State Government may at the request of the Development Authority proceed to acquire such land under the provisions of Land Acquisition Act, 1894 but for that no time limit is mentioned here. It also provides that on payment of compensation, the land shall vest with the Development Authority. In the present case, neither the land belonging to the petitioner was acquired by way of agreement nor any request was sent to the State Government by the respondent to acquire the land. Learned counsel for the Indore Development Authority submitted that after completion of the scheme, the utilised land shall be acquired, but at this stage, the area of the land can not be ascertained for acquisition. this submission is misconceived as the land shall be vested with Development Authority only after payment of the compensation. The construction or development could not have been started without the acquisition of the land. Admittedly the petitioner has not been paid the compensation and development work has been started on her land.

Therefore, the Indore Development Authority has acted in violation of the provisions of Section 56 of the Adhiniyam, by starting the construction without acquisition and payment of compensation of the land of the petitioner.

9- Despite the above, the conduct of the petitioner is also liable to be examined in this matter. The fact remains that a large area of the land i.e. 90% of the total acquisition owned by the land owners had agreed to surrender their lands by way of agreement and accepted the developed plots in the said scheme. Only the petitioner and some landowners did not agree to get for agreement with Indore Development Authority. For 10% of the land owners entire work of development in the public interest cannot be put to stand stall. In order to find the solution and grant compensation, the Indore Development Authority constituted a committee which recommended for grant of 26% of developed land in lieu of compensation. The petitioner has not given any justification as to why such a proposal is not acceptable to her when most of the landowners had already accepted the same.

10- After filing the revision in the year 2010, the petitioner remained silent. The revision had already been dismissed in the year 2011, but the petitioner did not care to get information about the status of the revision. The petitioner filed a writ petition in the year 2013, which was disposed of with a direction to the respondent to decide the representation dated 23.11.2009 under the Adhiniyam, 1973. The only remedy available to the landowners in the Adhiniyam is to file the revision under Section 51, which has already been exhausted by the petitioner. From the year 2013 to till date, the petitioner has not filed any document to show whether the

copy of the order dated 21.10.2013 passed by this Court was communicated to the Indore Development Authority. The petitioner was not seriously pursuing with Indore Development Authority for the acquisition of her land. She got disposed of the Writ Petition with direction to Indore Development Authority to decide her representation. When the petitioner remained silent for years altogether, as per Board's decision dated 30.05.2015, the I.D.A. sent a letter dated 06.06.2018 offering the grant of 26% developed plots to the petitioner and the same is liable to be treated as per the decision of the Indore Development Authority. The petitioner did not submit any acceptance or denial in writing and filed this writ petition after 3 years. In Para 5.7 of the writ petition, the petitioner has admitted the receipt of the communication dated 06.06.2018, but nothing has been averred about her response in respect of the aforesaid offer. Therefore, now the petitioner is stopped from seeking quashment of the scheme and payment of compensation by way of acquisition.

11- That in response to the letter dated 06.06.2018, the petitioner did not inform the Indore Development Authority that she is not willing to accept 26% of the developed plot. Now, only for the land of the petitioner, land acquisition proceedings under the new land acquisition act are liable to be initiated that too after the lapse of 13 years. The resolution of the board of Indore Development Authority had been accepted by 90% of land owners by getting the developed plots to surrender their lands. Taking into consideration of all the facts and circumstances in totality now the only option available to the petitioner is to accept the developed plots i.e. offer given vide letter dated 6.6.2018 from the Indore Development Authority.

12- The Apex Court in the case of *State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404* had held that right to property is not only the constitutional or statutory right but also a human right. Thereafter in the case of *Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation, (2013) 1 SCC 353* observed that even after right to property ceased to be a fundamental right, possession of the property of a citizen can be taken only in accordance with law as per the mandate contained in Article 300-A of the Constitution of India. In a similar situation the Division Bench of this High Court of this court in the case of *Khushal Das Phatnani v. Raipur Development Authority, 1994 SCC OnLine MP 20* has refused to quash the scheme and directed for mutual negotiation under section 56 of Adhiniyam, with addition amount of compensation, the conclusion part of the order is as under:-

19. We do not quash the scheme or the allotment in favour of respondents 5 to 12 as it will work hardship more so when the provisions of the Madhya Pradesh Nagar Tatha Gram Niwesh Adhiniyam, the land cannot be utilised for any other purpose. The petitioner cannot claim any better right except to get compensation. In the instant case the respondents being negligent, we direct that if the land acquisition proceedings are not completed within a period of 3 months from the date of order, the Raipur Development Authority shall pay compensation by mutual negotiations as provided under section 56 of the Act on the market rate prevailing. In addition to the same we further direct that the respondents 1 to 4 shall immediately pay Rs. 50,000/- as interim compensation in addition to the compensation that may be decided under the land acquisition proceedings. This amount shall be paid within a month from the date of passing of the order. In case, the compensation proceedings are not completed by mutual negotiations within the stipulated period as directed above the petitioner shall be free to approach this Court for taking any steps against respondents.

Since the Indore Development Authority took possession of the land of the petitioner without acquisition, hence the petitioner is

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entitled to get Rs. 2,00,000.00 (in word: Two lacks) as additional compensation from the Indore Development Authority .

**(VIVEK RUSIA)
JUDGE**

Vindesh