IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 1st OF FEBRUARY, 2023

FIRST APPEAL No. 21 of 1997

BETWEEN:-

1. KISHAN LAL S/O LATE SHRI MUNSHI RAM, AGED ABOUT ABOUT 68 YEARS, R/O GURUBAS KI TALAIYA, NEAR RAM MANDIR, 38/1 HAMIDIYA ROAD, BHOPAL (MADHYA PRADESH) (DEAD) THROUGH LEGAL REPRESENTATIVES

1-A RAJINDER SINGH S/O NOT MENTION, AGED ABOUT 35 YEARS, R/O GURUBAX KI TALAIYA, NEAR RAM MANDIR, 38/1, HAMIDIYA ROAD, BHOPAL (MADHYA PRADESH)

1-B SANT KUMAR S/O NOT MENTION, AGED ABOUT 32 YEARS, R/O GURUBAX KI TALAIYA, NEAR RAM MANDIR, 38/1, HAMIDIYA ROAD, BHOPAL (MADHYA PRADESH)

1-C SMT. SUMITRA RANI W/O NOT MENTON, AGED ABOUT 60 YEARS, R/O GURUBAX KI TALAIYA, NEAR RAM MANDIR, 38/1, HAMIDIYA ROAD, BHOPAL (MADHYA PRADESH)

2. GOPAL DAS BHARTI S/O GURDATT MAL BHARTI, AGED ABOUT 76 YEARS, OCCUPATION: PROPRIETOR BHARTI ENGINEERING CO. HAMIDIYA ROAD, BHOPAL (MADHYA PRADESH)

3. TARA SINGH (DEAD) THROUGH LEGAL REPRESENTATIVES

3-A SMT. KRISHNA DEVI W/O LATE SHRI TARA SINGH, AGED ABOUT 45 YEARS, R/O CHINTAMAN GALI, SHANICHARA MOHALLA, HOSHANGABAD (MADHYA PRADESH)

3-B SMT. SHOBHA THAKUR D/O LATE SHRI TARA SINGH W/O JAGDISH SINGH THAKUR, AGED ABOUT 28 YEARS, R/O CHINTAMAN GALI, SHANICHARA MOHALLA, HOSHANGABAD (MADHYA PRADESH)

3-C VIJAY SINGH THAKUR S/O LATE SHRI TARA SINGH, AGED ABOUT 20 YEARS, R/O CHINTAMAN GALI, SHANICHARA MOHALLA, HOSHANGABAD (MADHYA PRADESH)

3-D KU. SUDHA THAKUR D/O LATE SHRI TARA SINGH, AGED ABOUT 15 YEARS, OCCUPATION: THROUGH NATURAL GUARDIAN AND MOTHER SMT. KRISHNA DEVI R/O CHINTAMAN GALI, SHANICHARA MOHALLA, HOSHANGABAD (MADHYA PRADESH)

.....APPELLANT

(BY SHRI P. N. MISHRA - ADVOCATE)

AND

1. **MUNICIPAL CORPORATION BHOPAL THROUGH ITS ADMINISTRATOR BHOPAL (MADHYA PRADESH)**

2. **MUNICIPAL CORPORATION, BHOPAL THROUGH ITS COMMISSIONER BHOPAL (MADHYA PRADESH)**

3. **STATE OF MADHYA PRADESH THROUGH COLLECTOR BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SMT. PAPIYA GHOSH- PENAL LAWYER)

This appeal coming on for hearing this day, the court passed the following:

ORDER

1. This First Appeal under Section 96 of Civil Procedure Code has been filed against the Judgment and Decree dated 25-10-1996 passed by 1st Additional Judge to the Court of Distt.Judge, Bhopal in C.S.No.4-A/1980 by which the suit filed by the plaintiffs/Appellants has been dismissed.

2. The facts necessary for disposal of present appeal in short are that the plaintiffs/appellants filed a suit for declaration of title and permanent injunction pleading *interalia* that plaintiff no.1 Gopaldas Bharti and Gurubaksh Singh purchased Kh.No.459/1 and 460 total area 0.48 acres situated inTallaiya Gurubaksh Nav Bahar, Sabji Mandi, Bhopal by registered sale deed dated 6-12-1958. On 23-12-1996, Gurubaksh Singh alienated his share to plaintiff no.2 Kishanlal and Tara Singh by registered sale deed. The land in dispute is in possession of the plaintiffs. Thereafter, the State Govt. started proceedings for acquisition of land and ultimately an acquisition award was passed. The land was acquired for the purposes of construction of Sabji Mandi. However, no notice was given to Gopal Das, Gurubaksh Singh, Tara Singh and Kishan lal as per Section 9 of Land Acquisition Act. Accordingly, Gopal Das challenged the validity of notification issued under Section 4 and 6 of Land Acquisition Act before the High Court by filing W.P.No.381/1979 which was dismissed by High Court by order dated 10-8-1979. Thereafter, Gopal Das filed S.L.P. before Supreme Court, which too was dismissed. However, the Supreme Court observed that although no question of law is involved, but the respondents may reconsider the case of Gopaldas. Although the land

was acquired for establishing a Sabji Mandi but on 28-8-1979, a notice was published for auction of the land including the land in dispute. It was claimed that the defendant has no right or title to acquire the disputed land. The disputed land is in possession of the plaintiffs and the land cannot be auctioned contrary to the purposes for it was acquired. Accordingly suit was filed for declaration of title and permanent injunction.

3. The defendants no.1 and 2filed their written statement and claimed that the plaintiffs are not the owner of the land in dispute. Acquisition proceedings were initiated against the erstwhile owner and accordingly, notification was issued on 25-3-1964 which was published in official gazette on 3-4-1964. There was no need to issue separate notice to the plaintiffs. The award was passed on 11-2-1966 whereas the sale deed in favour of plaintiffs was executed on 23-12-1996, i.e., much after the award was passed. Therefore, no right or title got transferred to the plaintiffs. The Writ Petition has already been dismissed by High Court and Supreme Court.

4. The defendant no.3 did not file any written statement.

5. The Trial Court after framing issues and recording evidence, dismissed the suit filed by the plaintiffs.

6. Challenging the judgment and decree passed by the Trial Court, it is submitted by the Counsel for the Appellants that they are the owners of the land in dispute by virtue of sale deed dated 6-12-1958 executed by Abdul Rehman. Gurubax Singh had already sold his

share to Appellant no. 1 Kishanlal and Appellant No.3 Tara Singh. The Trial Court wrongly held that the plaintiffs are not in possession of the land in dispute. The Trial Court also erred in law by holding that the dismissal of writ petition and S.L.P. by High Court and Supreme Court respectively would amount to res-judicata. It is further submitted that since land has been auctioned for a purpose different from the purpose for which it was acquired, therefore, the acquisition proceedings should have been quashed.

7. Heard the learned Counsel for the Appellants.

8. It is the case of the Appellants that the land was acquired for the establishment of Sabji Mandi, however, the same is being used for another purpose, therefore, the land should be returned back by denotifying from the acquisition.

9. The only question for consideration is that when the land has vested in State Govt. upon the acquisition of the same, then whether the land can be denotified from the acquisition or not?

10. The Supreme Court in the case of ***Govt. of A.P. v. Syed Akbar***, reported in ***(2005) 1 SCC 558*** has held as under :

> **"14.** From the position of law made clear in the aforementioned decisions, it follows that (*1*) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (*2*) the land acquired for a public purpose could be utilised for any other public purpose; and (*3*) the acquired land which is vested in

> the Government free from all encumbrances cannot be reassigned or reconveyed to the original owner merely on the basis of an executive order."

11. The Supreme Court in the case of ***Chandragauda Ramgonda Patil v. State of Maharashtra***, reported in ***(1996) 6 SCC 405*** has held as under :

> **"2.** Shri Naik, the learned Senior Counsel appearing for the petitioners, contended that in the second writ petition, the petitioner sought restitution of the possession pursuant to the resolution of the State Government dated 10-10-1973 under which the Government directed that the surplus land was to be utilised first for any other public purpose and in the alternative it was to be given back to the erstwhile owners. Since he had sought enforcement of the said government resolution, the writ petition could not be dismissed on the ground of constructive res judicata. He also seeks to rely upon certain orders said to have been passed by the High Court in conformity with enforcement of the government resolution. We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken way back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the writ petitions. It is axiomatic that the land acquired for a public purpose would be utilised for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilised, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these

> circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions."

12. The Supreme Court in the case of ***Tamil Nadu Housing Board v. Chandrasekaran (Dead) by LRS. and others*** reported in ***(2010) 2 SCC 786*** has held as under :

> **"28.** It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey the land to the original owner if the same can be utilised for any public purpose other than the one for which it was acquired."

13. The Supreme Court in the case of ***T.N. Housing Board v. Keeravani Ammal***, reported in ***(2007) 9 SCC 255*** has held as under :

> **"13.** It is clearly pleaded by the State and the Tamil Nadu Housing Board that the scheme had not been suspended or abandoned and that the lands acquired are very much needed for the implementation of the scheme and the steps in that regard have already been taken. In the light of this position, it is not open to the Court to assume that the project has been abandoned merely because another piece of land in the adjacent village had been released from acquisition in the light of orders

of the Court. It could not be assumed that the whole of the project had been abandoned or has become unworkable. It depends upon the purpose for which the land is acquired. As we see it, we find no impediment in the lands in question being utilised for the purpose of putting up a multi-storied building containing small flats, intended as the public purpose when the acquisition was notified. Therefore, the High Court clearly erred in proceeding as if the scheme stood abandoned. This was an unwarranted assumption on the part of the Court, which has no foundation in the pleadings and the materials produced in the case. The Court should have at least insisted on production of materials to substantiate a claim of abandonment.

15. We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In *State of Kerala*v. *M. Bhaskaran Pillai* [(1997) 5 SCC 432] in a similar situation, this Court observed: (SCC p. 433, para 4)

"The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in

> the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

14. The Supreme Court in the case of ***Northern Indian Glass Industries v. Jaswant Singh and others*** reported in ***(2003) 1 SCC 335*** has held as under : para 9 to 12

> **"9.** Looking to the facts of the present case and conduct of Respondents 1-5, the High Court was not at all justified in ignoring the delay and laches and granting relief to them. As already noticed, Respondents 1-5 approached the High Court by filing writ petition almost after a period of 17 years after finalization of the acquisition proceedings. They accepted the compensation amount as per the award and sought for enhancement of the compensation amount without challenging the notification issued under Sections 4 and 6. Having sought for enhancement of compensation only, they filed writ petition even three years after the appeals were disposed of by the High Court in the matter of enhancement of compensation. There is no explanation whatsoever for the inordinate delay in filing the writ petitions. Merely because full enhanced compensation amount was not paid to the respondents, that itself was not a ground to condone the delay and laches in filing the writ petition. In our view, the High Court was also not right in ordering

restoration of land to the respondents on the ground that the land acquired was not used for which it had been acquired. It is a well-settled position in law that after passing the award and taking possession under Section 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is acquired, the landowner does not get any right to ask for revesting the land in him and to ask for restitution of the possession. This Court as early as in 1976 in *Gulam Mustafa* v. *State of Maharashtra* [(1976) 1 SCC 800] in para 5 has stated thus: (SCC p. 802, para 5)

"*5.* At this stage Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long after the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration."

10. In *Chandragauda Ramgonda Patil* v. *State of Maharashtra* [(1996) 6 SCC 405] it is stated that the acquired land remaining unutilized was not intended to be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of notification.

11. Yet again in *C. Padma* v. *Dy. Secy. to the Govt. of T.N.* [(1997) 2 SCC 627] it is held that acquired land having vested in the State and the compensation having been paid to the claimant, he was not entitled to restitution of possession on the

> ground that either original public purpose had ceased to be in operation or the land could not be used for other purpose.
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> **12.** If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land. As already noticed, the State Government in this regard has already initiated proceedings for resumption of the land. In our view, there arises no question of any unjust enrichment to the appellant Company."

15. Thus, it is clear that once, the land has vested in the State Govt., then it cannot be returned back by denotifying from the acquisition. Once the land is acquired, it vests in the State free from all encumbrances. The land owner becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever. Once the land has vested in the State Govt., then there cannot be any rider on the right of the State Govt. to change land use.

16. Further, the acquisition proceedings were challenged before the High Court and the said writ petition was dismissed and the S.L.P. was also dismissed. Therefore, the verasity of the acquisition notifications cannot be questioned in the present case.

17. Accordingly, no case is made out warranting inteference in the matter.

18. Ex-consequenti, the Judgment and Decree dated25-10-1996 passed by 1st Additional Judge to the Court of Distt.Judge, Bhopal in C.S.No.4-A/1980 is hereby **Affirmed.**

19. The Appeal fails and is hereby **Dismissed.**

(G.S. AHLUWALIA)
JUDGE

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