

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 23rd OF JANUARY, 2023

WRIT APPEAL No. 75 of 2007

BETWEEN:-

**M.P. HOUSING BOARD, THROUGH THE DEPUTY
COMMISSIONER, GRIH NIRMAN MANDAL, HATITAL
COLONY, JABALPUR (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI ASHISH SHROTI - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH, THROUGH
SECRETARY, LOCAL SELF GOVERNMENT,
VALLABH BHAWAN, BHOPAL (MADHYA
PRADESH)**
- 2. MUNICIPAL CORPORATION, THROUGH
COMMISSIONER, MUNICIPAL CORPORATION,
JABALPUR (MADHYA PRADESH)**
- 3. DIVISIONAL OFFICER, DIVISION NO.1,
MUNICIPAL CORPORATION JABALPUR (MADHYA
PRADESH)**

.....RESPONDENTS

***(SHRI SUYASH THAKUR - GOVERNMENT ADVOCATE FOR RESPONDENT
NO.1 AND SHRI JAGAT SINGH - ADVOCATE FOR RESPONDENTS NO.2
AND 3)***

WRIT APPEAL No. 76 of 2007

BETWEEN:-

2

M.P. HOUSING BOARD, THROUGH DEPUTY
COMMISSIONER, GRIH NIRMAN MANDAL, HATITAL
COLONY, JABALPUR (MADHYA PRADESH)

.....APPELLANT

(BY SHRI ASHISH SHROTI - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH, THROUGH SECRETARY, LOCAL SELF GOVERNMENT, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. MUNICIPAL CORPORATION, THROUGH COMMISSIONER, MUNICIPAL CORPORATION, JABALPUR (MADHYA PRADESH)
3. DIVISIONAL OFFICER, DIVISION NO.1, MUNICIPAL CORPORATION, JABALPUR (MADHYA PRADESH)

.....RESPONDENTS

(SHRI SUYASH THAKUR - GOVERNMENT ADVOCATE FOR RESPONDENT NO.1 AND SHRI JAGAT SINGH - ADVOCATE FOR RESPONDENTS NO.2 AND 3)

These appeals coming on for hearing this day, Hon'ble Shri Justice Ravi Malimath, Chief Justice passed the following:

ORDER

Since both these appeals arise out of a common order dated 01.05.2006 passed by the learned Single Judge in dismissing the Writ Petition No.271 of 2004 and Writ Petition No.903 of 2003 and since identical issue is involved in both these appeals, they are being heard together and are being disposed off by this common order. For the sake of convenience, the facts and grounds stated in Writ Petition No.271 of 2004 are taken into consideration.

2. The writ petitioner is the Madhya Pradesh Housing Board (in short 'the Board'). The case of the writ petitioner is that the State Government has acquired about 111.19 Acres of land situated in Village Purwa, Tahsil and

District Jabalpur for construction of the houses. The possession of the land was taken by the Land Acquisition Officer from the owners and handed over to the Board in terms of Annexure P-2 dated 23.01.1970. After taking possession of the land, the Board started developing the land for residential and commercial purposes. Various houses were constructed and were allotted to the beneficiaries on various terms and conditions. Various amounts were paid by the Board towards sanctioning charges, development charges, permission charges, etc. Thereafter, the Municipal Corporation by the impugned order dated 06.01.2004 vide Annexure P-1, directed the Board to deposit a sum of Rs.19,35,537/- towards property tax for the period 2002-2003 and 2003-2004 as far as Dhanvantri Nagar is concerned and an amount of Rs.2,92,040/- towards water tax pertaining to Anand Nagar Colony and Govind Bhawan Colony situated in Civil Lines. Challenging the same, the instant petitions were filed.

3. The contention of the writ petitioner was to the effect that the land in question was acquired by the State Government and possession was handed over to the Board to make construction. That since the land vests in the State Government the petitioners are not liable to pay property tax. That there is violation of Sections 173, 174 and 175 of the M.P. Municipal Corporation Act, 1956 (for short 'the Act of 1956'). Therefore, the impugned order initiating proceedings as contemplated under Section 178 of the Act of 1956 is without authority of law and jurisdiction. That the Board is not the owner of the land which is acquired by the State Government and hence they are not liable to pay the taxes as demanded by the Corporation. That the Board is only performing its function of initiating the acquisition of land and the construction of the houses over them. That the ownership would always vest with the State and

after the construction, the houses are allotted in favour of the beneficiaries and it is they who have to pay the taxes to the Corporation. That the Board has already deposited the amount pertaining to sanction, construction and development charges and therefore, no further amount is liable to be paid by them.

4. The same is disputed by the respondents through their reply. They denied the claim of the writ petitioner. They contend that under the provisions of Section 132 (6)(j) of the Act of 1956, the Corporation has jurisdiction and authority to recover all the taxes from the writ petitioner. That the provisions of Section 136 of the Act of 1956 are not applicable to the instant case. That the writ petitioner is neither the Union of India nor the State Government that could be exempted from payment of property tax. That the demand made by the Corporation is appealable under Section 184 of the Act of 1956 and therefore, unless the alternative remedy is exhausted, the question of maintaining the writ petitions would not arise for consideration.

5. The learned Single Judge having considered the plea dismissed the petitions. While doing so, the learned Single Judge came to the view that the short question involved in the petitions is whether the Municipal Corporation is entitled to recover property tax from the petitioner Board. Reliance was placed on Part IV Chapter XI of the Act of 1956 relating to taxes. That in terms of Section 132 of the Act of 1956, the same empowers the Municipal Corporation to impose taxes on land and buildings falling within the Municipal Areas. The provisions of Section 42 of the Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972 (for short 'the Act of 1972') relied upon was considered by the learned Single Judge. The learned Single Judge came to the view that the

colony after acquisition was transferred by a resolution of the Board to the Municipal Corporation, Jabalpur. In the absence of such a resolution, the Board is liable to pay the property tax. It was also held that with regard to the payment of taxes by the Board, the Board is not exempted from payment of tax unless the property is transferred to the Municipal Corporation vide resolution of the Board under Section 42 of the Act of 1972. Till then the Board is liable to pay the property tax. By placing reliance on various judgments of the High Court as well as the Supreme Court, the petitions were dismissed. Questioning the same, the instant appeals are filed.

6. Shri Ashish Shroti, learned counsel for the appellant once again places reliance on Section 132 of the Act of 1956 in support of his case. He submits that the property continues to be the property of the State. Until and unless the property has been transferred to the Board, the question that the Board being liable to pay the property tax or other taxes to the Corporation would not arise for consideration.

7. Heard learned counsels.

8. Keeping in mind the facts of the case, we find it necessary to ascertain the nature of the acquisition. There is no mention either in the writ petitions nor any documents have been produced with regard to the acquisition of the land in question. It is merely narrated that the land is required by the State for the Board in order to enable the Board to put up the construction. Therefore, we are of the view that until and unless the facts are clear with regard to the acquisition, the learned Single Judge need not have proceeded to hear the petitions. The contention being advanced is that the acquisition has been made by the State under the provisions of the Land Acquisition Act, 1894 (for short 'the Act of 1894'). Therefore, the acquisition and the proceedings thereof may

show that the State continues to be the owner of the land in question. It is the further contention that the Board would merely act as an agency to put up the construction and receive a power to alienate the property. We have our own doubts with regard to the same.

9. Chapter X of the Act of 1972 would indicate with regard to the acquisition and disposal of land. Section 48 of the Act of 1972 postulates the power to purchase or lease by agreement the land in question. It indicates that the Board may enter into an agreement with any person for acquisition of land, purchase, etc. The said section would have no bearing on this land because this is a case of a compulsory acquisition.

10. Section 49 of the Act of 1972 deals with Acquisition of Land. The same reads as follows:-

"49. Acquisition of land- (1) The Board may also take steps for the compulsory requisition of any land or any interest therein required for the execution of a housing scheme in the manner provided in the Act of 1894 (No.1 of 1894), and the acquisition of any land or any interest therein for the purpose of this Act shall be deemed to be acquisition for a public purpose with in. the meaning of the Land Act, 1894 (No.1 of 1894)

(2) The Board shall be deemed to be a local authority for the purpose of Act of 1894 (No.1 of 1894)."

11. Therefore, the language used in Section 49 of the Act of 1972 is quite clear. The acquisition by the State is primarily under Section 49 of the Act of 1972 and the procedure that has to be followed for the purposes of acquisition are those procedures as envisaged under the Act of 1894. Therefore, to contend that the acquisition is under the Act of 1894 and purely intended for the purposes of the State, in our considered view may not be correct nor is there any material in support of the case of the writ petitioner. So far as acquisition of land by the Board is concerned, there are various provisions under the Act of 1972 with regard to acquisition of such land. That the Board would first have to

prepare a Scheme as postulated under Chapter VI with regard to a Housing Scheme and Infrastructure Development Scheme. It is on approval of such a Scheme that the land goes in for acquisition. Therefore, primarily the acquisition is under Section 49 of the Act of 1972 and the procedure to be followed is as envisaged under the Act of 1894. Under these circumstances, if the provisions of the Act of 1972 are to be considered then upon such acquisition, there is a subsequent vesting of the land with the State. In the instant case, since the acquisition is under Section 49 of the Act of 1972, the vesting would necessarily take place so far as the Board is concerned and not the State.

12. Therefore, the land for all practical purposes would stand vested with the Board in terms of the provisions under Section 16 of the Act of 1894. Therefore, once the land vests with the Board, it's the Board that has absolute control, right, title and interest over the land in question. They can deal with it in the manner they find it appropriate in terms of the Scheme as propounded by the Board and approved by the State. Therefore, all acts of the Board would stand governed by such a Scheme which has been approved by the State. Therefore, to contend that the land has been acquired under the provisions of the Act of 1894 and the land has vested with the State and the Board is only a contractor to built the houses, in our considered view runs opposite to the provisions of the Act of 1972.

13. Even so far as the contention with regard to alienation is concerned, it is admitted that the alienations are made by the Board themselves and not by the State. Therefore, even assuming that the contentions of the writ petitioner are to be accepted that the land has vested in the State and the State is the owner and not the Board, in that event the Board would not have any right, title or interest

to alienate the property to anyone. The right to alienate property comes from the acquisition of the land under Section 49 and its consequential vesting of the property with the Board. It is only on such vesting of the land with the Board that the Board would receive a right, title and interest to alienate the property. Therefore, even if the contentions of the petitioners are to be accepted, we do not find that such would be the legal consequences as claimed by the petitioners.

14. Section 50 of the Act of 1972 further contemplates the power to dispose off the land. The same would read as follows:-

"50. Power to dispose of land.-(1) Subject to any rules made by the State Government under this Act, the Board may retain or may lease, sell, exchange or otherwise dispose of any land, building [or any apartment therein] or other property vesting in it and situate in the area comprised in any housing scheme or in any adjoining area.

(2) Whenever the Board decides to lease or sell any land acquired by it under this Act from any person, it shall

(a) may give notice by advertisement in one of the leading local newspaper in the State; and

(b) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land for an amount or at a rate to be fixed by the Board, if the Board considers that such an offer can be made without detriment to the carrying out of the purposes of this Act.

(3) If in any case two or more persons claim to have the prior right referred to in clause (b) of sub-section (2) preference shall be given to the person who agrees to pay the highest amount or rate for the land, not being less than the amount or rate fixed by the Board under that clause."

15. Therefore, Section 50 of the Act of 1972 would also refer to the vesting of the land in the Board. Therefore, the reasoning assigned herein above is supported by the provisions of Section 50 which clearly refers to vesting of land in the Board. Therefore, the contentions that the acquisition having taken place and the land vests with the State runs opposite to Chapter X. The land having vested with the Board in terms of Section 50 it is the Board alone that would have absolute right, title and discretion to deal with the property in the

manner it so chooses.

16. Be that as it may, so far as the finding of the learned Single Judge is concerned, we do not find any reference to the nature of the acquisition at all. The findings recorded by us as a result of a discussion at the time of hearing when it was presumed and assumed that the acquisition is made under Section 49 of the Act of 1972 read with the Act of 1894. In the absence of any material to indicate the nature of the acquisition, we do not find that the writ petitions could have been entertained. Therefore, the findings recorded so far as Section 132 of the Act of 1956 and other provisions are concerned, would be a far off question which would not arise for consideration. The primary question to be answered is as to whether the acquisition of land is for the purposes of the State or for the purposes of the Board. Apparently, no such notification has been produced but in terms of the contentions being advanced by the writ petitioner it could be presumed that the acquisition made by the State is under Section 49 of the Act of 1972 read with Sections 4 and 6 of the Act of 1894.

17. If that is the position in fact, then the necessary consequences as narrated herein above would follow. The Board would have to be considered as the owner of the land in question. If they are owners of land in question, which fall within the territorial jurisdiction of the Corporation, they come within the rigors of the Act of 1956. The demands made by the Corporation with regard to payment of such taxes as applicable would necessarily have to be satisfied by the writ petitioner. They cannot wriggle out of the situation by contending that the acquisition is by the State and the State is the owner and the State is liable to pay the taxes. Under these circumstances, we do not find any error committed by issuance of the impugned order by the Corporation. The demand is justified

in terms of the Act of 1956.

18. Under these circumstances, the writ appeals being devoid of merit are dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

taj

(VISHAL MISHRA)
JUDGE

