

Bhausahab and Others Vs. the State of Maharashtra Through Its Secretary, Urban Development Department and Others

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Court : Mumbai Aurangabad

Decided On : Dec-03-2013

Judge : A.H. Joshi & Ravindra V. Ghuge

Appeal No. : Writ Petition Nos.6366 of 2009 & 9133 of 2013

Appellant : Bhausahab and Others

Respondent : The State of Maharashtra Through Its Secretary, Urban Development Department and Others

Judgement :

Oral Judgment: (A.H. Joshi, J.)

1) Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2) Facts involved in the case are not disputed. Case pertains to a dispute as regards acquisition of land done for the purpose of development plan of Shirdi Town. The draft development plan of Shirdi town was proposed, duly notified and was finalized after hearing all objections. The Final development plan was notified in official Gazette. The petitioners confirm these facts in the body of the writ petitions.

3) Writ petition No.6366 of 2009 was filed on 28.9.2009. During pendency of the petition, the land acquisition proceedings were completed. It is not in dispute that in furtherance to notice dated 1.3.2008, under Sections 9 (3) and 9(4) of the Land Acquisition Act, the writ petitioners had objected to the land acquisition, stating that the objections raised by the petitioners before the Honourable Minister thereby praying for deletion of their lands from the acquisition, is pending. Petitioners in Writ Petition No. 6366 of 2009 refrain from furnishing their claims relating to compensation.

4) The dates and events supplied by the petitioners are summarized for convenience as follows:-

(A) WRIT PETITION NO.6366 OF 2009

BhausahabMurlidhar Gondkar and others

Versus

The State of Maharashtra and others

Sr	Date	Particulars of events
1	15.12.1992	The Development Plan of Shirdi Municipal Council was finalized and approved by the Government of Maharashtra and the same was published in the Government Gazette.
2	25.2.1993	The Development Plan of Shirdi Municipal Council came into force.
3	15.12.1992	Two ring roads were shown in the sanctioned Development Plan.
4	1980	Father of the petitioners had constructed a residential house in the agricultural land owned by him before commencement of Development Plan.

5	21.2.2008	Collector, Ahmednagar published a notification under section 126(4) of the MRTP Act, 1966 read with Section 6 of the Land Acquisition Act, 1894 for the purpose of acquisition of land for construction of internal ring road.
6		<p>Immediately after petitioners came to know about the notification for initiation of acquisition proceedings, petitioners approached the Secretary to Government, Urban Development Department and prayed for modifications in the Development Plan.</p> <p>The petitioners requested to delete internal ring road from the Development Plan since the same was no longer necessary.</p>
7	16.4.2008 7.5.2008	The Minister of State for Urban Development called meeting in his chamber and the same was adjourned. All the concerned officers were directed to remain present on 7.5.2008 in the chamber of Hon'ble Minister of State for Urban Development along with record.
7A	7.5.2008	The meeting was held in the chamber of Honourable Minister.

8	21.6.2008	The Desk Officer to Government Urban Development Department circulated the minutes of the meeting held on 7.5.2008 seeking comments as regards the changed alignment of 18 m wide internal ring road.
9	16.6.2008	The request of the petitioners for deleting internal ring road from the Development Plan was turned down.
10	21.7.2008	The petitioners approached the Hon'ble for Urban Development Department and requested to call for report from the concerned authorities.
11	10.7.2008	Meanwhile, the Desk Officer to Government, Urban Development Department has called all concerned for spot inspection report changing the alignment of the internal ring road.
12	1.3.2008	Meanwhile, the Sub Divisional Officer, Shrirampur has issued notices under Section 9(3)(4) of the Land Acquisition Act on 1.3.2008.
13	12.3.2008	Petitioners have submitted an objection to the construction of internal ring road pursuant to the notice, urging that petitioners' representation against acquisition was pending before Honourable Minister.

(B) WRIT PETITION NO.9133 OF 2013

Sau. Sanjivani Dashrath Mahambre and others

Versus

The State of Maharashtra and others

Sr.	Date	Particulars of events
1	1926	The petitioners' father was residing in Shirdi since 1926. The petitioners' father owner of various lands in Shirdi and was devotee of "Shri Saibaba". Almost 25 Acres of land owned by petitioner's father from Shirdi Town has been acquired from time to time for various public purposes.
2	...	Except petitioners Residential House and Place of Business almost entire lands belonging to petitioners have been acquired by Government for various public purposes.
3.	...	The petitioners are owner of land Gut Nos.148/1 situated at Shirdi, Tq. Rahata, District Ahmednagar which is adm. 05 Hector and 02 Gs.
4.	...	Out of the above land 04 Hector and 86 Rs. land is sought to be acquired for "Dharma Shala" and other purpose.
5	29.4.2002	The said acquisition is stayed by this Hon'ble High Court by way of Writ Petition No.390/2002 by an order dt.29.4.2002.

6	...	Thereafter, out of the same land 03 Rs. land is acquired for the purpose of construction of road.
7	21.2.2008	The notification is published in daily "Nagar Times" for acquisition of 27 Ares land out of Gut No.148/1 situated at Shirdi, Tq. Rahata, District Ahmednagar.
8	2011	The petitioners have filed a Writ Petition No.6953/2011 challenging the said acquisition.
9	13.9.2011	This Hon'ble High Court has by way of an interim order directed the parties to maintain status quo.
10	15.10.2013	The petitioners have withdrawn the petition with a liberty to file a fresh Writ Petition.
11	...	The petitioners own 05.02 Hectors of land and by way of different acquisitions 5.04 Hectares land is sought to be acquired.

5) During the pendency of the writ petitions, the Land Acquisition Officer had declared the award on 30th August, 2011.

6) Recently by amending the petition, the petitioners have incorporated challenge to the said award.

7) Petitioners in these two petitions, take serious exception to the scheme of law as in vogue in the form of Section 126(2)(3)(4) of the Maharashtra Regional and Town Planning Act, 1960, as can be seen from the amended pleadings as well as their notes of arguments.

8) The exception is on the plea that said provisions militate against the constitutional guarantee of Article 14 r/w. Constitutional direction under Article

300A of the Constitution of India.

9) Writ petitions are opposed by the respondents on the grounds as follows:-

(A) ON FACTS :

(a) That the acquisition is for the purpose of development of ring road;

(b) Shirdi town is on world map and has become extremely crowded;

(c) To avoid load of traffic and for maintenance of law and order, it is necessary to have the traffic diverted;

(d) The entire land merging into ring road which is under the Development Plan Road is acquired;

(e) All lands except those owned by the petitioners are converted into development plan road - ring road.

(f) Part of the land under acquisition subject matter of challenge, is also acquired and only part thereof, covered by certain contractors has remained to be taken in possession.

(g) In view of the existing road under the affected area, bottlenecks in the traffic are created and it is necessary to dismiss the petitions and let the work of ring road be completed in larger public interest.

(h) Process of hearing and opportunity was available to the petitioners at the time of conversion of Draft Development Plan into final plan.

(i) Petitioners were again heard at the time of notice under Section 9 of the Land Acquisition Act.

{B} OBJECTIONS ON THE POINT OF LAW:

(a) Challenge to Section 126 of MRTP Act, on the ground that it militates against the constitutional guarantee is no more res-integra. It has attained finality and petitions deserve dismissal.

(b) For considering the challenge contained in the petitions, it is necessary to advert to the grounds as averred in the petition as well as submissions advanced at Bar.

10) This court shall not denote the grounds averred in the petition and those furnished by way of synoptic notes, as verbose, nevertheless, it would be possible to condense those submissions, which are condensed as follows:-

(a) The Land Acquisition Act, is the parent and/or principal legislation authorizing acquisition of land for public purpose;

(b) The MRTP Act has its main objective of orderly development of towns, regions, roads and various other purposes.

(c) Acquisition of land is a device and not the object of the MRTP Act.

(d) The device of acquisition is available under the Land Acquisition Act;

(e) The provisions under the Land Acquisition Act, which confer on the owners of the land, a beneficial right have to be respected;

(f) Acquisition by taking recourse to Land Acquisition Act would be thus be available to the State and hence, authority of the State to acquire land will continue to remain accessible through provisions of the Land Acquisition Act and rights of the citizen will also be protected;

(g) Therefore, the scheme of Land Acquisition Act, through Section 11A and other provisions, will be deemed to be bodily incorporated under Section 2 of the MRTP Act, lest, Sections 126(2)(3)(4) will have to be declared ultravires and will have to be struck down;

11) RELIANCE ON PRECEDENTS:

Learned Advocate for the petitioners, has placed reliance on the following judgments:-

(1) Nagpur Improvement Trust and others Vs. Vitthalrao and others. (1973) 1 SCC 500;

(2) District Registrar and Collector, Hyderabad and Another Vs. Canara Bank and others. (2005)1 SCC 496;

(3) The Solapur Promoters and Builders Association Society and another Vs. State of Maharashtra and others. 2005(4) ALL MR 484;

(4) Director General of Doordarshan and others Vs. Anand Patwardhan and others. (2006)8 SCC 433.

(5) Municipal Committee Patiala Vs. Model Town Residents Association and others. (2007) 8 SCC 669.

(6) Anuj Garg Vs. Hotel Ass of India. (2008) 3 SCC 1.

(7) Girnar Traders Vs. State of Maharashtra and others. (2011) 3 SCC 1.

(8) Andhrpradesh Dairy Development Corporation Federation Vs. B. Narasimha Reddy and others. (2011) 9 SCC 286.

(9) Shri Navendra Kumal Vs. Union of India and another W.A. No. 119 of 2008, decided on 6.11.2013 by Guahati High Court.

12) Based on all these judgments, the petitioners advanced submissions as follows:-

(a) The Constitution Bench, delivering the judgment in **GirnarTraders Vs. State of Maharashtra and others reported in (2011)3 SCC 1**, (hereinafter referred to as, **Girnar Traders (3)** for sake of brevity) does not lay down a correct law.

(b) While deciding the said case, the Full Bench of the Honourable Supreme Court has considered and distinguished the reported judgment in the case of NIT vs. Vitthalrao and others (supra), the said case of NIT is not correctly distinguished and hence, the said judgment of Full Bench in **GirnarTraders (3)**, is per incuriam.

(c) It is still open for this court in exercise of jurisdiction under Article 226 of the Constitution of India to hold and declare that Section 126 of the MRTP Act is ultra-vires the constitution.

13) It is not necessary on facts of the case, and in view of the legal position, as to whether it is open to the court to examine the legality and constitutional validity of law, in the background that some time in the past, it was examined by this court.

14) Learned Government Pleader appearing for the State has urged that all submissions canvassed by the learned Advocate for the petitioners do not carry any substance. The Judgment of the Honourable Supreme Court in NIT vs. Vitthalrao and another, is fully considered and distinguished by the Honourable Supreme Court in **GirnarTraders (3)** case, and the challenges have no merit.

15) The limited question, which arises for consideration in the light of the legal position, as it has emerged from **GirnarTraders (3)**, is as follows:

Is the question of applicability of Land Acquisition Act, to the provisions of the MRTP Act, as a superior or parent legislation, open for adjudication and ruling by this court **OR**

Whether the question of constitutional validity of Section 126 of the MRTP Act, open for scrutiny?

16) It shall suffice if this court looks into precedents, namely , **NIT Vs. Vitthalrao and another** and **GirnarTraders (3)**, referred to supra.

17) It is seen from reading of NIT Vs. Vitthalrao, that various amendments to NIT Act, intended to amend various provisions of the Land Acquisition Act. Those amendments were challenged on the ground that they militate against the beneficial provisions contained in the Land Acquisition Act, which provided for acquisition of land in favour of the NIT and prescribed for payment of solatium lesser than the amount payable under the Land Acquisition Act when acquisition is done for the purpose of NIT.

The Honourable Supreme Court in **NIT vs. Vitthalrao** supra held that, those amendments resulted in carving out NIT as a separate acquiring body and as a class, for various reasons recorded in the said judgment, and taking away all beneficial provisions contained in the Land Acquisition Act, while the land was being acquired for NIT, were held to be ultravires.

18) The Honourable Supreme Court considered the entire scheme of the Land Acquisition Act and compared those provisions with the provisions pertaining to acquisition for the purpose and under the MRTP Act.

19) In these premises, the Supreme Court ruled with full exposition of the scheme of the MRTP Act that the scheme of Section 126, dispensed with the stages and in particular, stage of Sections 4 and 5A of the Land Acquisition Act. In para.39 it is held that MRTP is a complete Code in itself and reference to provisions of the Land Acquisition Act was, for the purpose of determination of payment of compensation and reference was only for that limited purpose. (para.84,85 and 86 of **GirnarTraders (3)** case.)

20) This exercise is done, in para.67 onwards in the judgment in the case of **Girnar Traders (3)**, and after threadbare scrutiny, the Honourable Supreme Court has arrived at conclusions, namely, the MRTP Act, was a complete code in itself. The entire purpose and object of providing for power to acquire and its procedure, was governed by the Land Acquisition Act, while, the whole perspective of MRTP Act and its objective, was to have a proper and orderly development of townships and providing for its method, modalities etc. and only the aspect of procedural matter, as to how to pass award, was drawn from the provisions of the Land Acquisition Act.

21) Section 11A of the Land Acquisition Act was not applicable (para.145, 145 and 191 of **GirnarTraders (3)** case).

22) With the above discussion, this court has to conclude the question as to desirability and or mandatory nature of provisions of Land Acquisition Act for implementation of scheme under the MRTP Act, as operating through Section 126, is no more open.

23) The challenge now before us is not open for any further scrutiny before this Court by virtue of binding nature of the dictum contained in Girnar Traders (3) case, as a rule of precedent.

The petitioners' contention suggesting that NIT Vs. Vithhalrao is not properly considered and thereby **GirnarTraders (3)** is per-incurium, is bold, ingenious, and courageous submission than based on reality. That the judgment in the case of **GirnarTraders (3)**, does not hold the cause espoused by the petitioners. It is another thing that the said judgment being available for criticism before the High court, which is bound by law of precedents.

24) Considering the facts and law, as falls for consideration before this court, we hold that the issue as to constitutional validity of Section 126(2) (3) and (4) of the MRTP Act, has to be answered in the negative. All other prayers are consequential. Since the first prayer fails, all other prayers do fail.

25) In the result, writ petitions are dismissed with costs. Rule is discharged.

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