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STATE OF MAHARASHTRA
v.
BABU GOVIND GAVATE ETC.

NOVEMBER 1, 1995

B

[K. RAMASWAMY AND B.N. KIRPAL, JJ.]

Land Acquisition Act, 1894/Bombay Tenancy and Agricultural Lands Act, 1948 :

C

Sections 4(1), 23/43—Compensation—Award of—Deduction of one-third Compensation in exercise of power under eminent domain—Validity of—Held, it is ultra vires the power and owner entitled to full compensation of the market value.

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For the purpose of establishing an Electricity Sub-station, certain lands were acquired under the Land Acquisition Act. Compensation was awarded at Rs. 5,000 per acre, but one thirds towards interest of Government was deducted. Respondent challenged the Government's power to deduct one-third compensation, but the appellate Court confirmed the same.

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On appeal, the High Court increased the compensation to Rs. 6000 per acre and also directed payment of the deducted one third amount to the respondent.

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In this appeal, it was contended that the Government in its circular dated April 26, 1972 directed the deduction of one-third of the market value of the land for the interest in such land held by Government and that there was no justification in interfering with the same; and that S.43 of the Bombay Tenancy and Agricultural Lands Act, 1948 empowers the Collector to grant sanction and to fix consideration as condition to alienate the lands when the Collector has the power to determine the compensation when the land was acquired for a public purpose.

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Dismissing the appeal and the connected appeal, this Court

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HELD : 1. Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 was enacted to protect the right, title and interest of the tenant who purchased the property and became owner thereof with a view to see

that he is not deprived of his ownership, right to possession and enjoyment thereof as a tiller of the soil to perpetuate the object of the Tenancy Act. As per its scheme previous sanction is a condition precedent for any transfer except when the land is being mortgaged to a cooperative bank or a lending institution envisaged in sub-section (1AA) and the Explanation appended there to amplifies such institutions so as to enable him to obtain loans for improving the land for better cultivation and to augment economic empowerment. The consideration mentioned there under was also to protect the tiller from exploitation, indigency or compelling dire necessity to alienate the loans and under a fictitious and colourable transaction or for inadequate consideration. That, under no circumstances, gives power to the Government, when it acquires the land exercising the power of eminent domain to deduct any amount from the compensation payable to the owner of the land as determined under Section 23(1) of the Land Acquisition Act. [697-E-G]

2. The sanction required under Section 43 is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee etc. as envisaged under Section 43(1). But when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under Section 43 does not arise. Section 23(2) of the Land Acquisition Act off sets the unwillingness on the part of the owner. When the Collector exercises the power to grant sanction under Section 43 (1), he does it as a statutory authority to protect right, title and interest of the erstwhile tenant who subsequently became the owner to see that he remains to be the owner and continues to be in possession and enjoyment of the same. But that condition to grant sanction is not hedged with any right to the Government to deduct 1/3 when it exercises its power of eminent domain for a public purpose. The owner under Section 23(1) of the Land Acquisition Act is entitled to the full compensation of the market value prevailing as on the date of publication of the notification under Section 4(1). Therefore, the circular relied on is clear *ultra vires* of the power of Section 43 or any other power.

[697-H, 698-A-D] G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3009 of 1983 Etc.

From the Judgment and Order dated 10.9.76 of the Bombay High Court in F.A. No. 574 of 1970

H

A S.M. Jadhav for the Appellant.

D.M. Nargolkar for the Respondents.

The following Order of the Court was delivered :

B *C.A. No. 3009 OF 1983.*

C The facts are very brief. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') acquiring land for a public purpose, namely, to establish Electricity Sub-section for the Maharashtra State Electricity Board as published in the State Gazette on April 19, 1966. The Land Acquisition Officer in his award determined the compensation at Rs. 5, 000 per acre in respect of an extent of 7 acres 9 gunthas of land in Survey No. 124-A situated in Airavali Village in Thane District of State of Maharashtra, but deducted 1/3rd towards the interest of the Government. The respondent had challenged the Government's power to deduct 1/3rd compensation. The appellate court confirmed the same. On appeal, the High Court, while increasing the compensation to Rs. 6,000 per acre, had directed payment of the deducted 1/3rd amount to the respondent by its judgment and decree dated 10.9.1976 made in F.A. No. 574/70. Thus this appeal by special leave.

E Learned counsel appearing for the State has contended that the Government in its circular dated April 26, 1972 issued by Revenue and Forests Department in letter No. LON-4767-H, directed deduction of 1/3rd of the market value of the land for the interest in such land held by the Government and that, therefore, the High Court was not justified in interfering with the order. He also contended that Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, 'the Tenancy Act') empowers the Collector to grant sanction. It is also empowered thereunder to fix consideration, as condition to alienate the lands when the Collector has the power to determine the compensation when the land was acquired for a public purpose. We are wholly unable to appreciate the stand taken by the Government. The object of the Tenancy Act, is to protect the "rights of the tiller of the soil", namely, the tenant or who later became owner so as to remain in possession and enjoyment of the land as part of economic justice assured in the preamble and the directive principles of the Constitution. Under the tenancy Act the tenant has been given right to purchase the lands from the erstwhile owner as provided in

different sections of the said Act. Sections 43(1) and 43(1A) provide that: A

"43(1) No land or any interest therein purchased by a tenant under Sections 17(B), 32, 32F, 32-1, 32-0, 32U, 43-ID or 88E or sold to any person under Section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest therein shall be partitioned without the previous sanction of the Collector. B

(1A) The sanction under sub-section (1) shall be given by the Collector in such circumstances and subject to such conditions, as may be prescribed by the State Government." C

Other sub-sections are not relevant for the purpose of this case. Hence omitted. D

A reading thereof clearly indicates that Section 43 was enacted to protect the right, title and interest of the tenant who purchased the property and became owner thereof with a view to see that he is not deprived of his ownership, right to possession and enjoyment thereof as a tiller of the soil to perpetuate the object of the Tenancy Act. As per its scheme previous sanction is a condition precedent for any transfer except when the land is being mortgaged to a cooperative bank or a landing institution envisaged in sub-section (1AA) and the Explanation appended there to amplifies such institution so as to enable him to obtain loans for improving the land for better cultivation and to augment economic empowerment. The consideration mentioned thereunder was also to protect the tiller from exploitation, indigency or compelling dire necessity to alienate the loans and under a fictitious and colourable transaction or for inadequate consideration. That, under no circumstances, gives power to the Government, when it acquires the land exercising the power of eminent domain to deduct any amount from the compensation payable to the owner of the land as determined under section 23(1) of the Act. E F G

The sanction required under Section 43 is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee etc. as envisaged under Section 43(1). But when H

- A the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under Section 43 does not arise. Section 23(2) of the Act off sets the unwillingness on the part of the owner paying time scheme. The question, therefore, is whether the Government under the aforesaid notification is entitled to deduct 1/3rd from the compensation determined under Section 23(1) of the Act. We have seen the notification and we are unable to accept the validity of the said notification.
- B When the Collector exercises the power to grant sanction under Section 43(1), he does it as a statutory authority to protect right, title and interest of the erstwhile tenant who subsequently became the owner to see that he remains to be the owner and continues to be in possession and enjoyment of the same. But that condition to grant sanction is not hedged with any right to the Government to deduct 1/3 when it exercises its power of eminent domain for a public purpose. The owner under Section 23 (1) is entitled to the full compensation of the market value prevailing as on the date of publication of the notification under Section 4(1). Therefore, the circular relied on is clearly *ultra vires* of the power of Section 43 or any other power.
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The appeal is accordingly dismissed and the order of the High court is sustained. Since the respondent is not appearing, there is no order as to costs.

- E C.A. No. 10421/95 @ SLP (C) No. 3746/79.

Leave granted. The appeal dismissed. No costs.

G.N.

Appeal dismissed.