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NOOR SK. BHAIKAN

v.

STATE OF MAHARASHTRA & ORS.

(Civil Appeal No.103 of 2002)

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JULY 7, 2011

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

RESETTLEMENT ACT, 1965:

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Allotment of agricultural land to landowner whose land had been acquired under Land Acquisition Act—Mistake in marking boundaries of land, and possession of wrong agricultural land handed over to allottee—Order of revenue authorities to allot alternative land—Held: The right of the allottee was to seek agricultural land under the provisions of the Re-Settlement Act and in so far as the right was protected, the allottee could not ask for a particular land—The grant of relief in relation to the alternate land cannot be faulted with inasmuch as if there was a mistake committed by the Revenue Authorities which was subsequently corrected, no advantage can be claimed by the allottee in that regard – The land which was not subject matter of the acquisition could not be treated as the land having been offered to the allottee validly and in accordance with law –The High Court has passed multifold directions in relation to granting of alternate land and conducting of an enquiry by the competent authority as well – Thus, the directions sufficiently take care of the interest of the allottee – As far as the claim of compensation by the allottee with regard to improvement made on the land is concerned, again it is for the Government to decide as per its policy—Land Acquisition Act, 1894.

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The appellant was allotted and handed over possession of 1.61 hectares of land in Survey Nos. 78/2 (81 'are') and 182/2 (81 'are') by order dated 25.8.1982

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pursuant to the certificate dated 3.8.1982 issued to him being a project affected person, as his house and agricultural lands had been acquired in terms of the Notification u/s 4 of the Land acquisition Act, 1897 in respect of which the award was made on 16.7.1979. A

Later, on an application filed by respondent No.5 before the Collector pointing out that the land which was handed over to the appellant on 25.8.1982 was in fact from survey No. 78/1 and not from Survey No. 78/2 and the said land was not even the subject matter of the acquisition, the Collector directed an inquiry. Consequently, it was found that while handing over possession of 81 'ares' of land purportedly out of Survey No. 78/2, the Circle Inspector had committed an error in marking the boundaries, and possession of wrong agricultural land was handed over to the appellant on 23.8.1982. The Collector, therefore, by order dated 28.9.1987 directed that the area allotted to the appellant as per original order dated 23.8.1982 needed a change. Accordingly, the Tehsildar issued an order to the Circle Inspector on 5.10.1987 to take corrective steps. The appellant challenged the order in a writ petition before the High Court, which though did not accept the claim of the appellant, but while finally disposing of the writ petition directed the State Authorities *inter alia* to allot the alternative land in Survey No. 23/1 to the appellant. The order was challenged by the appellant in the instant appeal B
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Dismissing the appeal, the Court

HELD: 1.1. The right of the appellant was to seek agricultural land under the provisions of the Re-Settlement Act, 1965 and in so far as that right was protected, the appellant could not ask for a particular land. Some distance between the offered land and the H

A land which was in dispute has rightly not been
considered to be a sufficient ground for requiring the
Court to grant the relief prayed for. The grant of relief in
relation to the alternate land cannot be faulted with
inasmuch as if there was a mistake committed by the
B Revenue Authorities which was subsequently corrected,
no advantage can be claimed by the appellant in that
regard, particularly when the mistake was in relation to a
root controversy. The land which was not subject matter
of the acquisition could not be treated as the land having
C been offered to the appellant validly and in accordance
with law. [para 5] [1078-C-F]

1.2. The High Court has passed multifold directions
in relation to granting of alternate land and conducting
of an enquiry by the competent authority as well. Thus,
D the directions sufficiently take care of the interest of the
appellant. The judgment of the High Court is well-
reasoned and even grants the appropriate relief to the
appellant. The operative part of the judgment, not only
gives appropriate relief to the appellant but also takes
E care of the correction of errors and enquiry into the
relevant issues by the authorities concerned. There is
hardly any scope for this Court to interfere with the
findings recorded by the High Court. [para 5-6] [1078-G-
H; 1079-A]

F 1.3. As far as the claim of compensation placed by
the appellant with regard to the improvement made on the
land is concerned, again it has been left for the
Government to decide as per its policy. It is significant to
note that for all this period, the appellant has been
G reaping benefits from the land to the exclusion of others.
[para 6] [1079-A-B]

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From the Judgment & Order dated 16.8.2001 of the High Court of Judicature of Bombay, Bench at Aurangabad in Writ Petition No. 1587 of 1987.

Shakil Ahmed Syed, Taiyab Khan, Firasat Ali for the Appellant.

Asha G. Nair, Himanshu Munshi for the Respondents.

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. The present appeal is directed against the judgment dated 16th August, 2001 passed by the High Court of Judicature of Bombay Bench at Aurangabad, declining the reliefs prayed for by the appellant, however, still issuing certain directions. The appellant had approached the High Court with the averment that his property, i.e. a house at Pimpalwadi, Taluka Paithan and agricultural land in Survey No. 170 was acquired for Jaikwadi Project and he thus became a project affected person. The concerned authorities had issued a certificate dated 3rd August, 1982 to him in this regard. After issuance of the notification under Section 4 of the Land Acquisition Act, a declaration under Section 6 of the Act was published on 16th January, 1975 and the award was made on 16th July, 1979. Pursuant to the certificate issued in favour of the appellant, he was allotted 1.61 hectares of land from two different survey nos., namely, 78/2 (81 are) and 182/2 (81 are) as per the order dated 23rd August, 1982. Possession of this land was handed over to him. The appellant deposited the occupancy price and even the mutation was effected in his name. However, in the meanwhile, the respondent no.5, namely Sow. Shantabai Ramesh Savele filed a regular suit in the Civil Court for a declaration in relation to the land in question. This suit was dismissed by the trial court and so was the appeal against the said judgment and decree dated 25th October, 1985. During the pendency of the appeal before the High Court, the said respondent filed another suit in the Court at Ambad with an application for injunction, which was also dismissed.

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A While approaching the Collector, the landlady namely, Sow. Shantabai Ramesh Savele respondent no.5 submitted an application pointing out that the land which was handed over to the appellant herein on 25th August, 1982 was in fact survey no. 78/1 and not from survey no.78/2. That land was not even

B the subject matter of the acquisition which culminated into the Award dated 16th July, 1979. The Collector, therefore, directed an enquiry and based on the said enquiry report, passed an order dated 28th February, 1986 directing the Tehsildar, Ambad to take suitable action so as to put the original owner

C in possession of the subject agricultural land. The Tehsildar issued a notice for handing over the possession and for taking proceedings in furtherance thereto. The Collector subsequently verified the representation made by the landlady and found that while handing over possession of 81 ares of land purportedly

D out of survey no. 78/2, the Circle Inspector had committed an error in marking the boundaries and possession of wrong agricultural land was handed over to the appellant on 23rd August, 1982. The Collector being satisfied about the mistake committed by the Circle Inspector, by his order dated 28th

E September, 1987 ordered that the area allotted to the appellant as per the original order dated 23rd August, 1982 needed a change. The Tehsildar, in furtherance thereto, issued an order to the Circle Inspector on 5th October, 1987 to take corrective steps. The appellant herein approached the High Court challenging the notices and he averred that remained in

F possession of the land and even an interim order was passed in his favour in the said petition.

Before the High Court, the stand of the respondents was that at the time of handing over the possession to the appellant,

G a mistake was committed by the Circle Inspector and he did not mark the boundaries properly which called for the corrective proceedings and this mistake was pointed out by the Collector on 6th February, 1986 on an application by respondent no.5. However, the appellant in the rejoinder maintained his

H averments and the High Court while rejecting the contentions

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raised on behalf of the appellant also rejected the arguments in equity that the appellant had acted as per the allotment order and he has been put in possession of the land in question by the Revenue authorities and now his position could not be altered and he could not be deprived of the agricultural land on which he has invested a good amount of funds for developing the same. Finally, the Court noticed that the appellant was put into possession of the land and he had enjoyed the fruits thereof. Thus, the plea of investment would not enhance the value of the submissions made on behalf of the appellant inasmuch as he could not continue to claim possession of the land which was not the subject matter of the acquisition itself. The claim of the appellant had not been accepted by the Court but still it gave alternative relief to the appellant. It will be appropriate for us to refer to the relevant paragraphs of the judgment finally disposing of the writ petition:

"In the result, the Writ Petition is dismissed. Interim order is vacated. We direct the respondents Nos. 1 to 4 to take appropriate steps to allot the alternative land in Survey No. 23/1 of village mahakala in Ambad taluka to the petitioner. However, before the petitioner is put in possession of the alternative land, he shall hand over vacant and peaceful possession of the subject land, except the land on which Madarsa/Mosque is located. The respondent No.5 has agreed before us that she shall not in any manner cause any disturbance to the Madarsa/Mosque and this undertaking would be binding on her successors as well.

We clarify that the allotment order and possession of the alternative land would be done first in favour of the petitioner and he shall submit of two weeks from today, to the effect that he shall hand over the possession of the subject land i.e. land in Survey Nos. 78/1 to the respondent no.5 as soon as the standing sugar cane crop is harvested or in any case before 31.12,2001 whichever is earlier.

A In view of the fact that the respondent No.5 has
 received compensation almost 20 years ago, we do not
 find any case to grant any other compensation for the part
 of the land on which Madarsa/Mosque is located and the
 boundaries of this land will be demarcated by Talathi of
 B Ambad within the period of two weeks from today and in
 presence of the petitioner, respondent No.5 and the
 Member of the Village Panchayat concerned.

C At this stage, Sh. Kadar, learned counsel for the
 petitioner prayed for compensation for construction of
 house and irrigation facilities etc. We are not inclined to
 consider the same and it would be appropriate that the
 State government decides this issue in keeping with the
 policy that may be in vogue as at present.

D We are also satisfied that this is a fit case where an
 enquiry is required to be directed. We accordingly direct
 the Collector, Jalna to conduct an enquiry as to how the
 petitioner came to be allotted the land which was not
 subject matter of the acquisition proceedings and fix the
 E responsibility on the officer/s concerned. Needless to
 mention, the collector shall proceed against such officer/s
 who are found guilty in the enquiry findings, as per the
 provisions of the Maharashtra Civil Services (Discipline
 and Appeal) Rules. We also clarify that our order will not
 F come in the way of the collector to enquire into the issue
 of allotment of excess land to the petitioner and his family
 members pursuant to the project affected certificate dated
 3.8.1982 and take appropriate steps as may be
 permissible in law.

G Rule discharged with no orders as to costs."

H It appears that during the pendency of the present appeal,
 respondent no.5, died on 12th December, 2003. An application
 being IA No. 1/2004, was filed for bringing the legal
 representatives of the deceased-respondent no.5 on record. IA

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No. 2/2004 was also filed for condonation of delay in filing the application for substitution of the legal representatives of the said deceased-respondent no.5. No reply has been filed till date and in any case, there is no opposition to these applications before us. Consequently, both these applications are allowed, subject to just exceptions. The delay in filing the application for substitution of the legal representatives is condoned and the representatives of the deceased-respondent no.5 as stated in paragraph 3 of the application are permitted to be brought on record. Liberty to file amended memo of parties is granted.

Another application was also filed being IA No. 4/2004 for placing on record a copy of the judgment passed by the Joint Civil Judge (Senior Division) at Jalna in RCS No. 332/2001 entitled *Rambhau S/o Narayan Rokde v. State of Maharashtra and Anr.* All that has been averred in this application is that the said suit has been decided by the Court on 16th April, 2002 and has a bearing on the issues involved in the present matter. Nothing has been averred as to how this judgment has any bearing on any of the issues involved in the present case as none of the parties to the present appeal are parties to that suit, except the State. It is in no way clear that the subject matter of that suit is the subject matter of the present appeal. In any case, the judgment was pronounced on 16th April, 2002 while the present application appears to have been filed in 2008. No steps were taken to bring this judgment on record of this Court for all that period. The counsel appearing for the applicant has not been able to show us the relevancy of that document to the present case. In fact, even in the application there is no averment as to the relevancy and necessity of the document to be brought on record by way of additional evidence in the present case and for it to be read in evidence. Thus, we do not consider it appropriate and in the interest of justice to allow this application. Consequently, the same is dismissed. However, we make it clear that the parties concerned will be at liberty to take steps against that judgment and decree as may be permissible to them in accordance with law.

A Reverting back to the merits of the present case, the High Court did not accept the contentions raised on behalf of the appellant in regard to the reduction of the land in question. However, the Court granted relief to the appellant in relation to an alternative site. There is hardly any scope for this Court to
B interfere with the findings recorded by the High Court. While referring to the proposals which were made by the respondents during the pendency of the case, the High Court had concluded that the offer did not vest the appellant with any indefeasible right to enforce those options. The offers were made so as to
C find out what would be the best applicable to the facts and circumstances of the case and it could not be construed that they were absolute in nature. The right of the appellant was to seek agricultural land under the provisions of the Re-Settlement Act, 1965 and in so far as that right was protected, the appellant could not ask for a particular land. Some distance between the
D offered land and the land which was in dispute has rightly not been considered to be a sufficient ground for requiring the Court to grant the relief prayed for in its terms. The grant of relief in relation to the alternate land cannot be faulted with inasmuch as if there was a mistake committed by the Revenue
E Authorities which was subsequently corrected, no advantage can be claimed by the petitioner in that regard, particularly when the mistake was in relation to a root controversy. The land which was not subject matter of the acquisition could not be treated as the land having been offered to the appellant validly and in
F accordance with law.

The High Court has passed multifold directions in relation to granting of alternate land and conducting of an enquiry by the competent authority as well. Thus, the directions sufficiently
G take care of the interest of the appellant. The judgment of the High Court is well-reasoned and even grants the appropriate relief to the appellant. In fact, we fail to understand the necessity for the appellant to file the present appeal. The operative part of the judgment, which we have afore-reproduced, not only
H gives appropriate relief to the appellant but also takes care of

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the correction of errors and enquiry into the relevant issues by the concerned authorities. As far as the claim of compensation placed by the appellant is concerned, again it has been left for the Government to decide as per its policy. One fact which cannot be lost sight of by this Court is that for all this period, the appellant has been reaping benefits from the land to the exclusion of others.

In view of the fact that none of the counsel appearing for the parties could confirm whether the directions issued by the Court have been implemented in their entirety or not, and if so, what is the stage of such implementation. In these circumstances, while dismissing the present appeal as being without any merit, we issue specific directions to the respondents and all authorities concerned that the action in furtherance to the directions issued by the High Court, if not already completed, should be completed as expeditiously as possible and the compliance thereto reported to the High Court without any further delay.

The appeal is dismissed, however, without any order as to costs.

R.P.

Appeal dismissed.