

SHEELA JAWARLAL NAGORI & ANR.

v.

KANTILAL NATHMAL BALDOTA & ORS.
(Special Leave Petition (C) No. 36518 of 2013)

MARCH 25, 2014

[**RANJANA PRAKASH DESAI AND
MADAN B. LOKUR, JJ.**]

TRANSFER OF PROPERTY ACT, 1882: Eviction decree by trial court, upheld by appellate court - Plea of tenant that the suit property was acquired by the Municipal Corporation for the purpose of a primary school and the Land Acquisition Officer had passed an award and, therefore, the landlord was divested of his right, title and interest in the suit property after the land acquisition proceedings and thus suit for eviction of tenant was not maintainable - High Court noted that there was no material to suggest that the Municipal Corporation had taken possession of the suit property from the landlord and on the contrary, the Corporation had sanctioned a development plan submitted by the landlord in respect of the suit property - Held: s.16 of the Land Acquisition Act, 1894 enables the acquiring authority to take possession of acquired land and when that is taken, it would be free from all encumbrances - In the absence of possession of the suit property being taken by Corporation, the plea by the tenant cannot be accepted that the landlord was divested of his right, title or interest in the suit property - The tenant continued to pay rent to the landlord even though according to the tenant the landlord had no concern with the suit property after the award was passed by the Land Acquisition Officer - The stand of the tenant was, therefore, self-defeating - Tenant was liable to be evicted.

UNDERTAKING: Eviction decree - Request by tenant for time to vacate the premises - Granted on condition of filing

A *undertaking - Non-filing of undertaking - Held: Amounts to flagrant disobedience and undermines the authority of the High Court - High Court advised to consider having the tenant first file an undertaking and placed on record before granting any interim order after dismissal of the tenant's petition.*

B **The respondent-landlord filed a suit for eviction which was decreed and upheld by the first appellate court. The appellant-tenant filed a writ petition before the High Court on the ground that the suit property was acquired by the Pune Municipal Corporation for the purpose of a primary school and the Land Acquisition Officer had passed an award and, therefore, the landlord was divested of his right, title and interest in the suit property after the land acquisition proceedings and therefore a suit for eviction of the tenant was not maintainable. The High Court noted that there was no material on record to suggest that the Pune Municipal Corporation had taken possession of the suit property from the landlord and that to the contrary, the Corporation had sanctioned a development plan submitted by the landlord in respect of the suit property. Aggrieved, the tenant filed instant SLP.**

Dismissing the SLP, the Court

F **HELD: 1. Section 16 of the Land Acquisition Act, 1894 enables the acquiring authority to take possession of acquired land and when that is taken, it would be free from all encumbrances. Therefore, on a plain reading of the provision, in the absence of possession of the suit property being taken by the Corporation, the contention for the tenant cannot be accepted that the landlord was divested of his right, title or interest in the suit property.**

G **The tenant continued to pay rent to the landlord even though according to the tenant the landlord had no concern with the suit property after the award was passed by the Land Acquisition Officer. The stand of the tenant was, therefore, self-defeating. [Paras 12, 13] [800-
H C, E-G]**

2. The tenants had the benefit of an interim order passed by the High Court staying the execution of the decree against them as well as a stay of operation of the judgments of the trial court and the appellate Court. On the dismissal of the proceedings by the High Court, the tenants applied for continuation of the interim order for a period of 12 weeks. The appellants stated that he would file usual undertaking to the effect that they would neither create third party interests nor part with possession and would hand over vacant and peaceful possession of the suit premises to the landlord. The tenants failed to file any such undertaking in the High Court. This court directed the tenants to file the necessary undertaking as ordered by the High Court within a week and subsequently the undertaking was filed. This indicates that even though the High Court trusts a litigant before it to comply with its orders, sometimes a litigant does not take the High Court seriously. This is unfortunate and undermines the authority of the Court. Therefore, the High Court would be well advised to consider having the tenant first file an undertaking and placed on record before granting any interim order after dismissal of the tenant's petition. Otherwise this may place the High Court in a difficult position where its order is flagrantly disobeyed, as has happened in these cases. [Paras 14 to 16] [801-A-H; 802-A]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 36518 of 2013.

From the Judgment and Order dated 24.10.2013 of the High Court of Bombay in CRA No. 350 of 2013.

WITH

SLP (C) No. 37456 of 2013.

V. Giri, A.K. Singhla, Pravin Satale, Vijay Kumar, Rajiv Shankar Dvivedi for the Petitioners.

A Caveator-In-person for the Respondents.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The question before us is whether a landlord can maintain a suit for eviction of his tenant even after an award has been passed in respect of the tenanted property under the provisions of the Land Acquisition Act, 1894. In our opinion, the answer must be in the affirmative.

C 2. The petitioners in both special leave petitions are the tenants of the respondent landlord. For convenience we have taken the facts from SLP (C) No. 37456 of 2013, but note that the issue that arises in both the cases is the same and the hearing proceeded on this basis.

D 3. The landlord had instituted Civil Suit No. 433 of 2000 in the Court of the 5th Additional Small Cause Judge and Jt. Civil Judge, Senior Division, Pune for vacant possession of the 'suit property' being CTS O'd 99-B Raviwar Peth, New 767 Budhwar Peth, Pune from the tenant. The contention of the landlord was that the suit property was open space let out to the tenants and that it was not protected by the Maharashtra Rent Control Act, 1999 (for short the Act). The Trial Court accepted the contention of the landlord and passed a decree on 28th June, 2005 directing the tenant to hand over vacant possession of the suit property.

F 4. Feeling aggrieved, the tenant preferred Civil Appeal No. 515 of 2005 before the Additional District Judge, Pune. The appeal was allowed by a judgment and order dated 3rd February, 2006 and the decree passed by the Trial Court set aside. It was held that the suit property was an open plot and that the provisions of the Act were not applicable, but it was held that the tenancy was required to be terminated in terms of Section 106 of the Transfer of Property Act, 1882.

H 5. The judgment and order passed by the appellate Court has attained finality since neither the tenant nor the landlord has

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challenged it.

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6. Following up on the order passed by the Additional District Judge, the landlord issued a notice to the tenant on 13th February, 2006 terminating the tenancy under Section 106 of the Transfer of Property Act, 1882. The tenant did not respond to the notice and that led the landlord to file Civil Suit No. 207 of 2006 in the Court of the Small Causes Judge, Pune for eviction of the tenant. The suit was decreed on 3rd March, 2009 and the tenant was directed to deliver vacant possession of the suit property to the landlord.

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7. Feeling aggrieved, the tenant preferred Civil Appeal No. 225 of 2009 before the District Judge but that was dismissed by judgment and order dated 19th January, 2012. The tenant was given two months time to vacate the suit property.

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8. Against the decision passed by the appellate Court the tenant preferred Writ Petition No. 2089 of 2012 which was dismissed by the Bombay High Court by its judgment and order dated 24th October, 2013 (impugned).

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9. In all the proceedings, the finding of fact has been that the suit property let out to the tenant was open land. We are not inclined to disturb this finding of fact arrived at by several Courts and indeed this finding was not seriously challenged by learned counsel for the tenant.

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10. The question raised by the tenant is that the suit property was acquired by the Pune Municipal Corporation for the purpose of a primary school and the Special Land Acquisition Officer had passed an award in respect thereof on 3rd August, 1979. Accordingly, the landlord was divested of his right, title and interest in the suit property after the land acquisition proceedings and therefore a suit for eviction of the tenant was not maintainable.

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11. The High Court noted that there was no material on

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A record to suggest that the Pune Municipal Corporation had taken possession of the suit property from the landlord. On the contrary, the Corporation had sanctioned a development plan submitted by the landlord in respect of the suit property through a notification issued on 5th January, 1987. It is clear, therefore, B that the Corporation had not taken possession nor had any intention of taking possession of the suit property.

12. That apart, Section 16 of the Land Acquisition Act, 1894 enables the acquiring authority to take possession of C acquired land and when that is taken, it would be free from all encumbrances. Section 16 of the Land Acquisition Act, 1894 reads as follows:

16. Power to take possession - When the Collector has made an award under Section 11, he may take possession D of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

Therefore, on a plain reading of the provision, in the absence of possession of the suit property being taken by the E Corporation, the contention of learned counsel for the tenant cannot be accepted that the landlord was divested of his right, title or interest in the suit property.

13. We may also note that it was brought out during the F course of hearing that the tenant continues to pay rent to the landlord even though according to the tenant the landlord had no concern with the suit property after the award was passed on 3rd August, 1979 by the Special Land Acquisition Officer. The stand of the tenant seems to be self-defeating for on the G one hand it is submitted that the landlord had no right, title or interest in the suit property but on the other hand the tenant continues paying rent to him.

14. An issue that arises out of these cases, and which we would like to flag, relates to the purpose and effectiveness of H

an order passed by the High Court granting time to the tenants to vacate suit premises. We are mentioning this because in these cases, the tenants had the benefit of an interim order passed by the High Court staying the execution of the decree against them as well as a stay of operation of the judgments of the Trial Court and the appellate Court. On the dismissal of the proceedings by the High Court, learned counsel for the tenants applied for continuation of the interim order for a period of 12 weeks. He stated that the tenants would file an undertaking along with all others using the suit property on or before 19th November, 2013 incorporating therein the following terms: (i) that they are in possession of the suit premises and nobody else is in possession; (ii) that they have neither created third party interests nor parted with possession; (iii) that they will hereafter neither create third party interests nor part with possession of the suit premises, (iv) that they will clear all arrears of rent, if any, within four weeks subject to adjustment, (v) they will not apply for extension of time, and (vi) that in case they are unable to obtain suitable orders from this Court within 12 weeks, they will hand over vacant and peaceful possession of the suit premises to the landlord.

15. The tenants failed to file any such undertaking in the High Court on or before 19th November, 2013. This was brought to our notice by the landlord on 4th February, 2014 and we directed the tenants to file the necessary undertaking as ordered by the High Court within a week. We were subsequently given to understand that the undertaking was filed.

16. These cases indicate that even though the High Court trusts a litigant before it to comply with its orders, sometimes a litigant does not take the High Court seriously. This is unfortunate and undermines the authority of the Court. We feel the recurrence of a situation as has happened in these cases needs to be avoided. Therefore, the High Court would be well advised to consider having the tenant first file an undertaking and placed on record before granting any interim order after

A dismissal of the tenant's petition. Otherwise this may place the High Court in a difficult position where its order is flagrantly disobeyed, as has happened in these cases.

B 17. We find no merit in these petitions and they are accordingly dismissed. The interim applications are also dismissed.

D.G.

SLPs dismissed.